

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

PIERO MARTIN DYER CORIAT ) Case No.  
 )  
Petitioner, ) **PETITION TO QUASH**  
 )  
vs. ) **INTERNAL REVENUE SERVICE SUMMONS**  
 )  
UNITED STATES OF AMERICA; ) **PURSUANT TO 26 U.S.C. 7609(b) AND**  
INTERNAL REVENUE SERVICE; ) **REQUEST FOR AN EVIDENTIARY HEARING**  
and TRUIST BANK )  
 )  
Respondent. )  
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Petitioner Piero Martin Dyer Coriat, through counsel, files his Petition in this proceeding and alleges upon information and belief:

1. This is a proceeding pursuant to 26 U.S.C. §7609(b) to quash a summons served on Truist Bank (herein referred to as "Truist").
2. This Court has jurisdiction over this proceeding, and venue lies within the Southern District of Florida pursuant to 26 U.S.C. §7609(h)(1) since Truist, the party summonsed, is found within the Southern District of Florida and maintains numerous and substantial connections within this Court's jurisdiction, including the Petitioner's alleged account at Truist.
3. Petitioner Piero Martin Dyer Coriat is a citizen and resident of Peru, with an address of Calle Mariscal Ramon, Castilla 100 DPTO. 101, Barranco, Lima, Peru.
4. The records sought by the summons relate to Petitioner Piero Martin Dyer Coriat.
5. This Petition is directed at the United States of America as Respondent, with the two other Respondents made a party as a procedural formality.

6. Petitioner received a copy of the summons on or about August 23, 2022. A copy of the summons, which was signed by IRS International Tax Law Specialist Amy D. Suave and IRS Supervisory Internal Revenue Agent Floyd B. Penn Jr., is attached hereto as exhibit "A."
7. This Petition is timely filed within 20 days after August 23, 2022, when the Petitioner was notified of the summons to Truist.
8. The Petitioner timely notified Truist and the IRS of this Petition to Quash by sending a copy of this Petition by certified mail and/or process server on September 1, 2022 to the following addresses:
  - a. The United States of America, pursuant to Fed. R. Civ. P. 4 by (A) sending a copy by certified mail to the United States Attorney's Office for the Southern District of Florida, Civil Process Clerk, 99 N.E. 4<sup>th</sup> Street, Miami, FL 33132; and (B) sending a copy by certified mail to the Attorney General of the United States in the U.S. Department of Justice, 950 Pennsylvania Avenue, N.W. Washington, DC 20530-0001;
  - b. Truist Bank, by sending a copy via a process server to c/o Corporation Service Company, 7 St. Paul Street Suite 820, Baltimore, MD, 22102.
  - c. Internal Revenue, by sending a copy via certified mail to 31 Hopkins Plaza, Rm 1040, Baltimore, MD 21201, Attn: Amy D. Suave.
9. The summons, exhibit "A," states that it is "In the matter of the Peruvian Income Tax Liabilities of Piero Martin Dyer Coriat, Calle Mariscal Ramon, Castilla 100 DPTO. 101, Barranco Lima, Peru". The summons requires testimony and production by Truist on September 22, 2022, at 12:00 P.M.

10. Truist is a third-party record keeper within the meaning of 26 U.S.C. §7609(a)(3).
11. Petitioner believes that this summons may have been issued for an improper purpose and does not comply with the standards established by the United States Supreme Court, in *United States vs. Powell*, 379 U.S. 48 (1964) that the IRS must satisfy to issue a valid summons. Said standards are:
  - a. The IRS must be conducting its investigation for a legitimate purpose;
  - b. The inquiry must be relevant to that legitimate purpose;
  - c. The IRS must not already possess the information and
  - d. The IRS must follow the administrative steps required by the code.
12. The IRS' involvement in this matter is unclear as the records do not involve the United States Government. Additionally, the summons fails to identify the kind of investigation against the Petitioner. Specifically, the summons seeks documents and information "in the matter of the Peruvian Income Tax Liabilities of Piero Martin Dyer Coriat." As the Petitioner is not subject to United States taxation, these requests are inappropriate. The United States Government has failed to identify a legitimate good faith purpose for its request.
13. The summons also violates the United States - Peru Tax Information Exchange Agreement under whose authority these documents are purportedly being sought.
14. Upon information and belief, the requested information sought by Peru as the requesting nation violates the Peruvian Constitution and applicable Peruvian statutes because it requests certain private information which is precluded under Peruvian law without the Peruvian government complying with certain conditions precedent.

15. The Tax Information Exchange Agreement of 15<sup>th</sup> February 1990 between the government of the United States of America and the government of the Republic of Peru for the exchange of tax information ("Tax Information Exchange Agreement"), exhibit "B," says at Article 1 at 1.3:

The mutual assistance that the Contracting States shall provide each other to carry out the objective of this Agreement shall be in conformity with, and subject to, the limitations established by their respective national laws and other regulations.

Thus, because the information requested violates Peruvian law, the summons violates Article 1.3 of the Tax Information Exchange Agreement.

16. Attached as exhibit "C" is a copy of the Peruvian Constitution in both Spanish and English. Article 2 subsection 5 as well as article 97 explain further the law relating to privacy and bank secrecy which preclude the divulging of any information from a bank unless there is a request of a Peruvian judge (a court order), a request by the Peruvian Attorney General, or a Peruvian congressional investigation committee. Below is Article 2 subsection 5 of the Peruvian Constitution, attached exhibit "C" which says in pertinent part:

Bank secrecy and the confidentiality of tax filings may be lifted by request of a judge, the Government Attorney General, or a congressional investigation committee, in accordance with law and provided that such information refers to a case under investigation.

17. Because the request violates the Tax Information Exchange Agreement, the request is violative of U.S. law in addition to the law of Peru.

18. Petitioner hereby requests an evidentiary hearing to resolve the issues raised by the Petition.

WHEREFORE, Petitioner respectfully requests judgment quashing this summons and granting such other and further relief as the Court may deem just, including the awarding of reasonable attorneys' fees to the Petitioner.

Respectfully submitted,

Weisberg Kainen Mark, PL  
1401 Brickell Avenue, Suite 800  
Miami, Florida 33131  
Phone: (305) 374-5544  
Facsimile No: (305) 358-8565

BY: S/ Dennis G. Kainen  
Dennis G. Kainen  
Florida Bar No. 339393  
Quinton L. Weisberg  
Florida Bar No. 118499  
Attorneys for Petitioner Piero Martin  
Dyre Coriat

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing document was filed with CM/ ECF and will be mailed this date and served on the following individuals or entities:

United States of America; United States Attorney for the Southern District of Florida, Civil Process Clerk, U.S. Attorney's Office, 99 N.E. 4th Street, Miami, FL 33132

Attorney General of the United States, U.S. Department of Justice, 950 Pennsylvania Avenue, NW Washington, DC 20530-0001.

Truist c/o Corporation Service Company, 7 St. Paul Street, Suite 820, Baltimore, MD 21202

Internal Revenue Service, 31 Hopkins Plaza, Rm 1040, Baltimore, MD 21201  
Attn: Amy D. Suave

On August 31, 2022

S/ Quinton L. Weisberg

# EXHIBIT A

To Piero Martin Dyer Coriat	Date August 23, 2022
Address	

c/o Dennis G. Kainen, Esq., 1401 Brickell Avenue, Ste. #800, Miami, Florida 33131

Enclosed is a copy of a summons served by the IRS to examine records made or kept by, or to request testimony from, the person summoned. If you object to the summons, you are permitted to file a lawsuit in the United States district court in the form of a petition to quash the summons in order to contest the merits of the summons.

If you are the taxpayer, see important information below on the suspensions of your periods of limitation under I.R.C. section 7609(e)(1) and (e)(2).

#### General Directions

1. You must file your petition to quash in the United States district court for the district where the person summoned resides or is found.
2. You must file your petition within 20 days from the date of this notice and pay a filing fee as may be required by the clerk of the court.
3. You must comply with the Federal Rules of Civil Procedure and local rules of the United States district court.

#### Instructions for Preparing Petition to Quash

1. Entitle your petition "Petition to Quash Summons."
2. Name the person or entity to whom this notice is directed as the petitioner.
3. Name the United States as the respondent.
4. State the basis for the court's jurisdiction, as required by Federal Rule of Civil Procedure. See Internal Revenue Code Section 7609(h).
5. State the name and address of the person or entity to whom this notice is directed and state that the records or testimony sought by the summons relate to that person or entity.
6. Identify and attach a copy of the summons.
7. State in detail every legal argument supporting the relief requested in your petition. See Federal Rules of Civil Procedure. Note that in some courts you may be required to support your request for relief by a sworn declaration or affidavit supporting any issue you wish to contest.

8. Your petition must be signed as required by Federal Rule of Civil Procedure 11.
9. Your petition must be served upon the appropriate parties, including the United States, as required by Federal Rule of Civil Procedure 4.
10. At the same time you file your petition with the court, you must mail a copy of your petition by certified or registered mail to the person summoned and to the IRS. Mail the copy for the IRS to the officer whose name and address are shown on the face of this summons. See 7609(b)(2)(B).

The court will decide whether the person summoned should be required to comply with the summons request.

#### Suspension of Periods of Limitation

If you are the taxpayer being examined/investigated by this summons and you file a petition to quash the summons (or if you intervene in any suit concerning the enforcement of this summons), your periods of limitation for assessment of tax liabilities and for criminal prosecutions will be suspended pursuant to I.R.C. section 7609(e)(1) for the tax periods to which the summons relates. Such suspension will be effective while any proceeding (or appeal) with respect to the summons is pending. Your periods of limitation will also be suspended under section 7609(e)(2) if the summoned person fails to fully respond to this summons for 6 months. The suspension under section 7609(e)(2) will begin 6 months after the summons is served and will continue until the summoned person finally resolves the obligation to produce the summoned information. You can contact the IRS officer identified on the summons for information concerning the suspension under section 7609(e)(2). If you contact the IRS officer for this purpose, please provide the following information: (1) your name, address, home and work telephone numbers and any convenient time you can be contacted and (2) a copy of the summons or a description of it that includes the date it was issued, the name of the IRS employee who issued it, and the name of the summoned person.

The relevant provisions of the Internal Revenue Code are enclosed with this notice. If you have any questions, please contact the Internal Revenue Service officer before whom the person summoned is to appear. The officer's name and telephone number are shown on the summons.

## U.S.-Peru Tax Information Exchange Agreement Article 4 / Type of Tax: Income

**Summons**In the matter of the Peruvian Income Tax Liabilities of Piero Martin Dyer CoriatInternal Revenue Service (division) Large Business and InternationalIndustry/Area (name or number) Office of Exchange & Offshore StrategyPeriods January 1, 2016 through December 31, 2018**The Commissioner of Internal Revenue**To Truist Bank\*At c/o Corporation Service Company, 7 St. Paul Street Suite 820, Baltimore, MD 21202

You are hereby summoned and required to appear before Amy Sauve or her designee  
 an officer of the Internal Revenue Service, to give testimony and to bring with you and to produce for examination the following books,  
 records, papers, and other data relating to the tax liability or the collection of the tax liability or for the purpose of inquiring into any  
 offense connected with the administration or enforcement of the internal revenue laws concerning the person identified above for the  
 periods shown.

See attachment for specific identification and information requested.

\*By and through one or more officers or employees who can identify and testify with respect to the documents requested  
 herein.

Do not write in this space

**Business address and telephone number of IRS officer before whom you are to appear**

31 Hopkins Plaza, Rm 1040, Baltimore, MD 21201 Phone: (202) 317-8413 E-mail: Amy.Sauve@irs.gov

**Place and time for appearance at** 31 Hopkins Plaza, Rm 1040, Baltimore, MD 21201

on the 22nd day of September, 2022 at 12 o'clock p.m.  
 (year)

Issued under authority of the Internal Revenue Code this 22nd day of August, 2022  
 (year)

Signature of issuing officer

**Amy D. Sauve**Digitally signed by Amy D. Sauve  
Date: 2022.08.22 08:04:35 -04'00'

Title

Tax Law Specialist

Signature of approving officer (*if applicable*)**Floyd B. Penn Jr.**Digitally signed by Floyd B. Penn Jr.  
Date: 2022.08.22 17:48:21 -04'00'

Title

Supervisory Internal Revenue Agent

Attachment to Summons to Truist Bank

In the Matter of  
The Peruvian Tax Liabilities of  
Piero Martin Dyer Coriat,  
Calle Mariscal Ramon,  
Castilla 100 DPTO. 101,  
Barranco  
Lima, Peru

You are hereby directed to personally appear at the time and place listed on the face sheet of this summons to give testimony under oath regarding Piero Martin Dyer Coriat ("Taxpayer") and to bring with you copies of all of the following documents, records, and information, including electronically stored information, in your possession, custody, or control pertaining to all accounts that may be owned, controlled, or under the signatory authority of Taxpayer, for the period from January 1, 2016 through December 31, 2018:

1. Account opening documents (regardless of date);
2. Account signature cards (regardless of date);
3. Know-Your-Customer and Customer Due Diligence records, as required to be collected and maintained under the law (regardless of date);
4. Periodic account statements;
5. Cancelled checks (front and back), deposit slips and deposited items (front and back), wire transfer authorizations and confirmations, cashier's checks, money orders, and all other deposit or withdrawal documents;
6. Documents reflecting the nature and amount of any income with respect to the account and taxes withheld or paid.

Accounts responsive to this request may include SunTrust account number 1000175791218.

For purposes of this summons, the term "accounts" encompasses all transactions between you and the Taxpayer, such as private banking accounts or activities, or the purchase of certificates of deposit, regardless of whether you consider such arrangements to constitute an account.

## ADDITIONAL INSTRUCTIONS

1. This summons requires that you personally appear to give testimony and to produce information responsive to each request listed above. However, your personal appearance will not be required if the requested information is received prior to the appearance time and date on this summons. This information may be sent, by mail or private delivery service, to the physical address listed below.

Internal Revenue Service  
31 Hopkins Plaza, Rm 1040  
Attn: LBI:EOI – Amy Sauve  
Baltimore, MD 21201  
202-317-8413

In lieu of providing paper documents, you may send an electronic storage device, such as a compact disc (CD) or USB flash drive, that contains the requested information to the physical address listed above. If you will be submitting more than 100 pages of paper documents, please contact the individual listed above before providing the documents.

2. IRC §7610 authorizes the Internal Revenue Service to reimburse certain expenses of third parties in complying with summonses. Treasury Regulation §301.7610-1 provides rules for determining which expenses may be reimbursed and the rates at which each type of expenditure will be reimbursed. If at any time it becomes apparent that allowable expenses determined under Treasury Regulation §301.7610-1 will exceed \$500, please contact Amy Sauve at (202) 317-8413.

## Provisions of the Internal Revenue Code

### **Sec. 7602. Examination of books and witnesses**

(a) Authority to Summon, etc. - For the purpose of ascertaining the correctness of any return, making a return where none has been made, determining the liability of any person for any internal revenue tax or the liability at law or in equity of any transferee or fiduciary of any person in respect of any internal revenue tax, or collecting any such liability, the Secretary is authorized -

- (1) To examine any books, papers, records, or other data which may be relevant or material to such inquiry.
- (2) To summon the person liable for tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, or care of books of account containing entries relating to the business of the person liable for tax or required to perform the act, or any other person the Secretary may deem proper, to appear before the Secretary at a time and place named in the summons and to produce such books, papers, records, or other data, and to give such testimony, under oath, as may be relevant or material to such inquiry; and
- (3) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry.

(b) Purpose may include inquiry into offense. - The purposes for which the Secretary may take any action described in paragraph (1), (2), or (3) of subsection (a) include the purpose of inquiring into any offense connected with the administration or enforcement of the internal revenue laws.

(c) Notice of contact of third parties.

- (1) General notice - An officer or employee of the Internal Revenue Service may not contact any person other than the taxpayer with respect to the determination or collection of the tax liability of such taxpayer unless such contact occurs during a period (not greater than 1 year) which is specified in a notice which—

- (A) informs the taxpayer that contacts with persons other than the taxpayer are intended to be made during such period, and
- (B) except as otherwise provided by the Secretary, is provided to the taxpayer not later than 45 days before the beginning of such period.

Nothing in the preceding sentence shall prevent the issuance of notices to the same taxpayer with respect to the same tax liability with periods specified therein that, in the aggregate, exceed 1 year. A notice shall not be issued under this paragraph unless there is an intent at the time such notice is issued to contact persons other than the taxpayer during the period specified in such notice. The preceding sentence shall not prevent the issuance of a notice if the requirement of such sentence is met on the basis of the assumption that the information sought to be obtained by such contact will not be obtained by other means before such contact.

(2) Notice of specific contacts. - The Secretary shall periodically provide to a taxpayer a record of persons contacted during such period by the Secretary with respect to the determination or collection of the tax liability of such taxpayer. Such record shall also be provided upon request of the taxpayer.

(3) Exceptions. - This subsection shall not apply—

- (A) to any contact which the taxpayer has authorized,
- (B) if the Secretary determines for good cause shown that such notice would jeopardize collection of any tax or such notice may involve reprisal against any person, or
- (C) with respect to any pending criminal investigation.

(d) No administrative summons when there is Justice Department referral.—

(1) Limitation of authority. - No summons may be issued under this title, and the Secretary may not begin any action under section 7604 to enforce any summons, with respect to any person if a Justice Department referral is in effect with respect to such person.

(2) Justice Department referral in effect. - For purposes of this subsection

- (A) In general. - A Justice Department referral is in effect with respect to any person if—

- (i) the Secretary has recommended to the Attorney General a grand jury investigation of, or the criminal prosecution of, such person for any offense connected with the administration or enforcement of the internal revenue laws or
- (ii) any request is made under section 6103(h)(3)(B) for the disclosure of any return or return information (within the meaning of section 6103(b)) relating to such person.

- (B) Termination. - A Justice Department referral shall cease to be in effect with respect to a person when—

- (i) the Attorney General notifies the Secretary, in writing, that
  - (I) he will not prosecute such person for any offense connected with the administration or enforcement of the internal revenue laws,
  - (II) he will not authorize a grand jury investigation of such person with respect to such an offense, or
  - (III) he will discontinue such a grand jury investigation.

- (ii) a final disposition has been made of any criminal proceeding pertaining to the enforcement of the internal revenue laws which was instituted by the Attorney General against such person, or

- (iii) the Attorney General notifies the Secretary, in writing, that he will not prosecute such person for any offense connected with the administration or enforcement of the internal revenue laws relating to the request described in sub paragraph (A)(ii).

(3) Taxable years, etc., treated separately. - For purposes of this subsection, each taxable period (or, if there is no taxable period, each taxable event) and each tax imposed by a separate chapter of this title shall be treated separately.

(e) Limitation on examination on unreported income. - The Secretary shall not use financial status or economic reality examination techniques to determine the existence of unreported income of any taxpayer unless the Secretary has a reasonable indication that there is a likelihood of such unreported income.

(f) Limitation on access of persons other than Internal Revenue Service officers and employees. The Secretary shall not, under the authority of section 6103(n), provide any books, papers, records, or other data obtained pursuant to this section to any person authorized under section 6103(n), except when such person requires such information for the sole purpose of providing expert evaluation and assistance to the Internal Revenue Service. No person other than an officer or employee of the Internal Revenue Service or the Office of Chief Counsel may, on behalf of the Secretary, question a witness under oath whose testimony was obtained pursuant to this section.

Authority to examine books and witness is also provided under sec. 6420 (e)(2) - Gasoline used on farms: sec. 6421(g)(2) - Gasoline used for certain nonhighway purposes by local transit systems, or sold for certain exempt purposes; and sec. 6427(j)(2) - Fuels not used for taxable purposes.

### **Sec. 7603. Service of summons**

(a) In general - A summons issued under section 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7602 shall be served by the Secretary, by an attested copy delivered in hand to the person to whom it is directed, or left at his last and usual place of abode; and the certificate of service signed by the person serving the summons shall be evidence of the facts it states on the hearing of an application for the enforcement of the summons. When the summons requires the production of books, papers, records, or other data, it shall be sufficient if such books, papers, records, or other data are described with reasonable certainty.

(b) Service by mail to third-party recordkeepers. -

- (1) In general. - A summons referred to in subsection (a) for the production of books, papers, records, or other data by a third-party recordkeeper may also be served by certified or registered mail to the last known address of such recordkeeper.

(2) Third party record keeper. - For purposes of paragraph (1), the term *third-party recordkeeper* means -

- (A) any mutual savings bank, cooperative bank, domestic building and loan association, or other savings institution chartered and supervised as a savings and loan or similar association under Federal or State law, any bank (as defined in section 581), or any credit union (within the meaning of section 501 (c)(14)(A));
- (B) any consumer reporting agency (as defined under section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681 a(f));
- (C) Any person extending credit through the use of credit cards or similar devices;
- (D) any broker (as defined in section 3(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(4));
- (E) any attorney;
- (F) any accountant;
- (G) any barter exchange (as defined in section 6045(c)(3));
- (H) any regulated investment company (as defined in section 851) and any agent of such regulated investment company when acting as an agent thereof;
- (I) any enrolled agent; and
- (J) any owner or developer of a computer software source code (as defined in section 7612(d)(2)). Subparagraph (J) shall apply only with respect to a summons requiring the production of the source code referred to in subparagraph (J) or the program and data described in section 7612(b)(1)(A)(ii) to which source code relates.

### **Sec. 7604. Enforcement of summons**

(a) Jurisdiction of District Court. - If any person is summoned under the internal revenue laws to appear, to testify, or to produce books, papers, records, or other data, the United States district court for the district in which such person resides or is found shall have jurisdiction by appropriate process to compel such attendance, testimony, or production of books, papers, records, or other data.

(b) Enforcement. - Whenever any person summoned under section 6420(e)(2), 6421 (g)(2), 6427(j)(2), or 7602 neglects or refuses to obey such summons, or to produce books, papers, records, or other data, or to give testimony, as required, the Secretary may apply to the judge of the district court or to a United States Commissioner for the district within which the person so summoned resides or is found for an attachment against him as for a contempt. It shall be the duty of the judge or Commissioner to hear the application, and, if satisfactory proof is made, to issue an attachment, directed to some proper officer, for the arrest of such person, and upon his being brought before him to proceed to a hearing of the case; and upon such hearing the judge or the United States Commissioner shall have power to make such order as he shall deem proper, not inconsistent with the law for the punishment of contempts, to enforce obedience to the requirements of the summons and to punish such person for his default or disobedience.

### **Sec. 7605. Time and place of examination**

(a) Time and place. - The time and place of examination pursuant to the provisions of section 6420(e)(2), 6421 (g)(2), 6427(j)(2), or 7602 shall be such time and place as may be fixed by the Secretary and as are reasonable under the circumstances. In the case of a summons under authority of paragraph (2) of section 7602, or under the corresponding authority of section 6420(e)(2), 6421 (g)(2) or 6427(j)(2), the date fixed for appearance before the Secretary shall not be less than 10 days from the date of the summons.

### **Sec. 7610. Fees and costs for witnesses**

(a) In general. - The Secretary shall by regulations establish the rates and conditions under which payment may be made of -

- (1) fees and mileage to persons who are summoned to appear before the Secretary, and
- (2) reimbursement for such costs that are reasonably necessary which have been directly incurred in searching for, reproducing, or transporting books, papers, records, or other data required to be produced by summons.

(b) Exceptions. - No payment may be made under paragraph (2) of subsection (a) if

- (1) the person with respect to whose liability the summons is issued has a proprietary interest in the books, papers, records or other data required to be produced, or
- (2) the person summoned is the person with respect to whose liability the summons is issued or an officer, employee, agent, accountant, or attorney of such person who, at the time the summons is served, is acting as such.

(c) Summons to which section applies. - This section applies with respect to any summons authorized under section 6420(e)(2), 6421 (g)(2), 6427(j)(2), or 7602.

### **Sec. 7210. Failure to obey summons**

Any person who, being duly summoned to appear to testify, or to appear and produce books, accounts, records, memoranda or other papers, as required under sections 6420(e)(2), 6421 (g)(2), 6427(j)(2), 7602, 7603, and 7604(b), neglects to appear or to produce such books, accounts, records memoranda, or other papers, shall, upon conviction thereof, be fined not more than \$1,000, or imprisoned not more than 1 year, or both, together with costs of prosecution.

**Sec. 7609. Special procedures for third-party summons****(a) Notice-**

(1) In general. - If any summons to which this section applies requires the giving of testimony on or relating to, the production of any portion of records made or kept on or relating to, or the production of any computer software source code (as defined in 7612(d)(2)) with respect to, any person (other than the person summoned) who is identified in the summons, then notice of the summons shall be given to any person so identified within 3 days of the day on which such service is made, but no later than the 23rd day before the day fixed in the summons as the day upon which such records are to be examined. Such notice shall be accompanied by a copy of the summons which has been served and shall contain an explanation of the right under subsection (b)(2) to bring a proceeding to quash the summons.

(2) Sufficiency of notice. - Such notice shall be sufficient if, on or before such third day, such notice is served in the manner provided in section 7603 (relating to service of summons) upon the person entitled to notice, or is mailed by certified or registered mail to the last known address of such person, or, in the absence of a last known address, is left with the person summoned. If such notice is mailed, it shall be sufficient if mailed to the last known address of the person entitled to notice or, in the case of notice to the Secretary under section 6903 of the existence of a fiduciary relationship, to the last known address of the fiduciary of such person, even if such person or fiduciary is then deceased, under a legal disability, or no longer in existence.

(3) Nature of summons. - Any summons to which this subsection applies (and any summons in aid of collection described in subsection (c)(2)(D)) shall identify the taxpayer to whom the summons relates or the other person to whom the records pertain and shall provide such other information as will enable the person summoned to locate the records required under the summons.

**(b) Right to intervene; right to proceeding to quash. -**

(1) Intervention. - Notwithstanding any other law or rule of law, any person who is entitled to notice of a summons under subsection (a) shall have the right to intervene in any proceeding with respect to the enforcement of such summons under section 7604.

**(2) Proceeding to quash. -**

(A) In general. - Notwithstanding any other law or rule of law, any person who is entitled to notice of a summons under subsection (a) shall have the right to begin a proceeding to quash such summons not later than the 20th day after the day such notice is given in the manner provided in subsection (a)(2). In any such proceeding, the Secretary may seek to compel compliance with the summons.

(B) Requirement of notice to person summoned and to Secretary. - If any person begins a proceeding under subparagraph (A) with respect to any summons, not later than the close of the 20-day period referred to in subparagraph (A) such person shall mail by registered or certified mail a copy of the petition to the person summoned and to such office as the Secretary may direct in the notice referred to in subsection (a)(1).

(C) Intervention, etc. - Notwithstanding any other law or rule of law, the person summoned shall have the right to intervene in any proceeding under subparagraph (A). Such person shall be bound by the decision in such proceeding (whether or not the person intervenes in such proceeding).

**(c) Summons to which section applies. -**

(1) In general. - Except as provided in paragraph (2), this section shall apply to any summons issued under paragraph (2) of section 7602(a) or under sections 6420(e)(2), 6421(g)(2), 6427(j)(2), or 7612.

**(2) Exceptions. - This section shall not apply to any summons**

(A) served on the person with respect to whose liability the summons is issued, or any officer or employee of such person;

(B) issued to determine whether or not records of the business transaction or affairs of an identified person have been made or kept;

(C) issued solely to determine the identity of any person having a numbered account (or similar arrangement) with a bank or other institution described in section 7603(b)(2)(A);

**(D) issued in aid of the collection of:**

(i) an assessment made or a judgment rendered against the person with respect to whose liability the summons is issued, or  
(ii) the liability at law or in equity of any transferee or fiduciary of any person referred to in clause (i); or

(E) (i) issued by a criminal investigator of the Internal Revenue Service in connection with the investigation of an offense connected with the administration or enforcement of the internal revenue laws, and  
(ii) served on a person who is not a third-party recordkeeper (as defined in section 7603(b)).

(3) John Doe and Certain Other Summons. - Subsection (a) shall not apply to any summons described in subsection (f) or (g).

(4) Records. - For purposes of this section, the term records includes books, papers, and other data.

(d) Restriction on examination of records. - No examination of any records required to be produced under a summons as to which notice is required under subsection (a) may be made -

(1) before the close of the 23rd day after the day notice with respect to the summons is given in the manner provided in subsection (a)(2), or

(2) where a proceeding under subsection (b)(2)(A) was begun within the 20-day period referred to in such subsection and the requirements of subsection (b)(2)(B) have been met, except in accordance with an order of the court having jurisdiction of such proceeding or with the consent of the person beginning the proceeding to quash.

**(e) Suspension of Statute of Limitations. -**

(1) Subsection (b) action. - If any person takes any action as provided in subsection (b) and such person is the person with respect to whose liability the summons is issued (or is the agent, nominee, or other person acting under the direction or control of such person), then the running of any period of limitations under section 6501 (relating to the assessment and collection of tax) or under section 6531 (relating to criminal prosecutions) with respect to such person shall be suspended for the period during which a proceeding, and appeals therein, with respect to the enforcement of such summons is pending.

(2) Suspension after 6 months of service of summons. - In the absence of the resolution of the summoned party's response to the summons, the running of any period of limitations under section 6501 or under section 6531 with respect to any person with respect to whose liability the summons is issued (other than a person taking action as provided in subsection (b)) shall be suspended for the period-

- (A) beginning on the date which is 6 months after the service of such summons, and
- (B) ending with the final resolution of such response.

(f) Additional requirement in the case of a John Doe summons. Any summons described in subsection (c)(1) which does not identify the person with respect to whose liability the summons is issued may be served only after a court proceeding in which the Secretary establishes that—

- (1) the summons relates to the investigation of a particular person or ascertainable group or class of persons,
- (2) there is a reasonable basis for believing that such person or group or class of persons may fail or may have failed to comply with any provision of any internal revenue law, and
- (3) the information sought to be obtained from the examination of the records or testimony (and the identity of the person or persons with respect to whose liability the summons is issued) is not readily available from other sources.

The Secretary shall not issue any summons described in the preceding sentence unless the information sought to be obtained is narrowly tailored to information that pertains to the failure (or potential failure) of the person or group or class of persons referred to in paragraph (2) to comply with one or more provisions of the internal revenue law which have been identified for purposes of such paragraph.

**(g) Special exception for certain summonses. -**

A summons is described in this subsection if, upon petition by the Secretary, the court determines, on the basis of the facts and circumstances alleged, that there is reasonable cause to believe the giving of notice may lead to attempts to conceal, destroy, or alter records relevant to the examination, to prevent the communication of information from other persons through intimidation, bribery, or collusion, or to flee to avoid prosecution, testifying, or production of records.

**(h) Jurisdiction of district court; etc. -**

(1) Jurisdiction. - The United States district court for the district within which the person to be summoned resides or is found shall have jurisdiction to hear and determine any proceedings brought under subsection (b)(2), (f), or (g). An order denying the petition shall be deemed a final order which may be appealed.

(2) Special rule for proceedings under subsections (f) and (g). - The determinations required to be made under subsections (f) and (g) shall be made ex parte and shall be made solely on the petition and supporting affidavits.

**(i) Duty of summoned party. -**

(1) Recordkeeper must assemble records and be prepared to produce records. On receipt of a summons to which this section applies for the production of records, the summoned party shall proceed to assemble the records requested, or such portion thereof as the Secretary may prescribe, and shall be prepared to produce the records pursuant to the summons on the day on which the records are to be examined.

(2) Secretary may give summoned party certificate. - The Secretary may issue a certificate to the summoned party that the period prescribed for beginning a proceeding to quash a summons has expired and that no such proceeding began within such period, or that the taxpayer consents to the examination.

(3) Protection for summoned party who discloses. - Any summoned party, or agent or employee thereof, making a disclosure of records or testimony pursuant to this section in good faith reliance on the certificate of the Secretary or an order of a court requiring production of records or the giving of such testimony shall not be liable to any customer or other person for such disclosure.

(4) Notice of suspension of statute of limitations in the case of a John Doe summons. - In the case of a summons described in subsection (f) with respect to which any period of limitations has been suspended under subsection (e)(2), the summoned party shall provide notice of such suspension to any person described in subsection (f).

**(j) Use of summons not required. -**

Nothing in this section shall be construed to limit the Secretary's ability to obtain information, other than by summons, through formal or informal procedures authorized by sections 7601 and 7602.

## **EXHIBIT B**

## TAX INFORMATION EXCHANGE AGREEMENT OF 15<sup>TH</sup> FEBRUARY, 1990

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE REPUBLIC OF PERU FOR THE EXCHANGE OF TAX INFORMATION

### **Article 1**

#### **Object and Scope of Application**

**1.1** The Government of the Republic of Peru and the Government of the United States of America, desiring to assure the accurate determination and collection of taxes, to prevent tax fraud and evasion, and to develop better sources of information for tax matters, and understanding the need for mutual collaboration for the purpose of penalizing violations of public and social norms relating to tax evasion, have agreed to provide each other assistance through the exchange of information, as provided in this Agreement for the Exchange of Tax Information.

**1.2** Information shall be exchanged to fulfill the purpose of this Agreement, within the context of the strictest reciprocity, under full responsibility, and independent of whether the person to whom the information relates is, or whether the information is held by, a resident or national of a Contracting State.

**1.3** The mutual assistance that the Contracting States shall provide each other to carry out the objective of this Agreement shall be in conformity with, and subject to, the limitations established by their respective national laws and other regulations.

**1.4** The requests for assistance presented under the terms of this Agreement shall be executed pursuant to the provisions of paragraph 1.3, except that:

- a)** execution of the request would require the requested State to exceed its authority or would otherwise be prohibited by legal provisions in force in that State, or when the information requested is not obtainable under the laws or in the normal course of the administration of the requested State or of the other Contracting State, in which case the competent authorities of both Contracting States shall consult with each other to agree upon alternative lawful means for securing assistance;
- b)** execution of the request would in the judgment of the requested State be contrary to its national security or public policy;
- c)** to supply information would disclose any trade, business, industrial, commercial, or professional secret or trade process;
- d)** to supply information requested by the applicant State to administer or enforce a provision of the tax law of the applicant State, or any requirement connected therewith, would discriminate against a national of the requested State. A provision of tax law, or connected requirement, will be considered to be discriminatory against a national of the requested State if it is different or more burdensome with respect to a national of the requested State than with respect to a national of the applicant State in the same circumstances. For purposes of the preceding sentence, a national of the applicant State who is subject to tax on worldwide income is not in the same circumstances as a national of the requested State who is not subject to such taxation. The provisions of this subparagraph shall not be construed to prevent the exchange of information with respect to taxes imposed by the Government of the United States of America or the Government of Peru, on branch profits or the excess interest of a branch or on the premium income of foreign insurers;
- e)** the request does not comply with the provisions of this Agreement.

**1.5** The Contracting States shall provide assistance through exchange of information authorized pursuant to Article 4 and such related measures as may be agreed upon by the competent authorities pursuant to Article 5 of this Agreement.

## **Article 2**

### **Taxes Covered by the Agreement**

**2.1** This Agreement shall apply to the following taxes imposed by or on behalf of a Contracting State:

- a)** in the case of the United States of America, the taxes administered by the federal government which are indicated below:
  - (i)** Federal income taxes,
  - (ii)** Federal taxes on self-employment income,
  - (iii)** Federal taxes on transfers to avoid income tax,
  - (iv)** Federal estate and gift taxes,
  - (v)** Federal excise taxes, and
- b)** in the case of Peru, the taxes administered by the National Superintendency of Tax Administration which taxes are indicated below:
  - (i)** Taxes on revenues (income and other revenues);
  - (ii)** Excise taxes (general sales taxes, selective excise taxes, and other taxes);
  - (iii)** Taxes on assets (net personal assets, business assets, and other assets);
  - (iv)** Transfer taxes.

**2.2** This Agreement shall apply also to any taxes imposed after the date of signature of the Agreement in addition to, or in place of, the existing taxes. The competent authority of each Contracting State shall notify the other of changes in laws which may affect the obligations of that State pursuant to this Agreement.

**2.3** This Agreement shall not apply to the extent that an action or proceeding concerning taxes covered by this Agreement is barred by the applicant State's laws.

**2.4** This Agreement shall not apply to taxes imposed by states, municipalities, regions, or other political subdivisions, or possessions under the jurisdiction of a Contracting State.

## **Article 3**

### **Definitions**

**3.1** For purposes of this Agreement:

- a)** The term "competent authority" means:
  - (i)** in the case of the United States of America, the Secretary of the Treasury or his delegate, and
  - (ii)** in the case of Peru, the National Superintendent of Tax Administration.
- b)** The term "national" means:
  - (i)** in the case of the United States, any United States citizen and any legal person, partnership, corporation, trust, estate, association, or other entity deriving its status as such from the laws in force in the United States of America; and

- (ii) in the case of Peru, any individual, conjugal society, estate, or legal person, or other entity that, in accordance with Peruvian tax legislation, has legal existence and is considered domiciled in the country.
- c) The term "person" means any individual or legal person, including a partnership, corporation, trust, association, estate, or other legal entity.
- d) The term "tax" means any tax to which the Agreement applies.
- e) The term "information" means any fact or statement, in any form whatever, that may be relevant or material to tax administration and enforcement, including but not limited to:
  - (i) testimony of an individual, and
  - (ii) documents, records or movable or immovable property of a person or Contracting State.
- f) The terms "applicant State" and "requested State" mean, respectively, the Contracting State applying for or receiving information and the Contracting State providing or requested to provide such information.
- g) For purposes of determining the geographical area within which this Agreement shall be applied, the term "United States" means the "United States of America," including Puerto Rico, the Virgin Islands, Guam, and any other United States possession or territory, and the term "Peru" means the "Republic of Peru," including all of the national territory, its waters, jurisdictional air space and any place over which it has authority.

**3.2** Any term not defined in this Agreement, unless the context otherwise requires or the competent authorities agree to a common meaning pursuant to the provisions of Article 5, shall have the meaning which it has under the laws of the Contracting State relating to the taxes which are the subject of this Agreement.

#### **Article 4** **Exchange of Information**

**4.1** The competent authorities of the Contracting States shall exchange information to administer and enforce the domestic laws of the Contracting States corresponding to the taxes covered by this Agreement, including information to effect the determination, assessment, and collection of tax, the recovery and enforcement of tax claims, as well as the investigation or prosecution of tax crimes or crimes involving the contravention of tax administration.

**4.2** The competent authorities of the Contracting States shall automatically transmit information to each other for the purposes referred to in paragraph 4.1. The competent authorities shall determine the information to be exchanged pursuant to this paragraph and the procedures to be used in the exchange of such information.

**4.3** The competent authority of a Contracting State shall transmit to the competent authority of the other State information which has come to its attention which is likely to be relevant to, and contribute significantly to, accomplishment of the purposes referred to in paragraph 4.1. The competent authorities shall determine the information to be exchanged pursuant to this paragraph, adopting and implementing the procedures that are necessary to ensure that the information is forwarded to the competent authority of the other Contracting State.

**4.4** The competent authority of the requested State shall provide information upon request by the competent authority of the applicant State for the purposes referred to in paragraph 4.1. If the information available in the tax files of the requested State is not sufficient to enable compliance with the request, that State shall take all relevant measures to provide the applicant State with the information requested.

- a) The requested State shall have the authority to:

- (i) examine any books, papers, records, or other movable property or documents relating to immovable property which may be relevant or material to such inquiry;
- (ii) question any person having knowledge or in possession, custody or control of information which may be relevant or material to such inquiry; and also to compel such person to appear at a stated time and place and testify under oath and produce books, papers, records, or other movable property, or documents relating to immovable property.

b) Laws or practices of the requested State pertaining to disclosure of information by banks, nominees or persons acting in an agency or fiduciary capacity, or respecting ownership of interests in a person (other than an individual) shall not prevent or otherwise affect the authority of the requested State described in subparagraph a). The competent authorities of the Contracting States shall have authority to obtain and provide information notwithstanding such disclosure laws and practices.

c) Privileges under the laws or practices of the applicant State shall not apply in the execution of a request in the requested State. Claims of privilege under the laws or practices of the applicant State shall be determined exclusively by the courts of that State, and claims of privilege under the laws or practices of the requested State shall be determined exclusively by the courts of that State.

**4.5** If information is requested by a Contracting State pursuant to paragraph 4.4, the requested State shall obtain it and provide it in the same form, as if the tax of the applicant State were the tax of the requested State and were being imposed by the requested State. However, if specifically requested by the competent authority of the applicant State, the requested State:

- a) shall specify the time and place for the taking of testimony under oath, and/or the production of books, papers, records, and other movable property and for the inspection of immovable property;
- b) shall permit the presence of those individuals designated by the competent authority of the applicant State as being involved in or affected by execution of the request, including the obligated person in the case of Peru, and the obligated person and the accused in the case of the United States, his legal representative, individuals charged with the administration and enforcement of the domestic laws of the applicant State covered by this Agreement, and a commissioner or official present for the purpose of rendering evidentiary rulings or determining issues of privilege under the laws of the applicant State;
- c) shall provide individuals referred to in subparagraph b) with an opportunity to question, directly or through the executing authority, the individual giving testimony or producing books, papers, records and other movable property or documents relating to immovable property;
- d) shall secure original and unedited books, papers, records, and other movable property or documents relating to immovable property;
- e) shall secure or produce true and correct copies of original and unedited books, papers and records;
- f) shall determine the authenticity of books, papers, records and other property produced;
- g) shall examine the individual producing books, papers, records and other property regarding the purpose for which and the manner in which the item produced is or was maintained;

- h)* shall permit the competent authority of the applicant State to provide written questions about the item produced which shall be answered by the individual producing books, papers, records and other movable property;
- i)* shall certify either that procedures requested by the competent authority of the applicant State were followed or that the procedures requested could not be followed, with an explanation of the deviation and the reason therefor;
- j)* shall perform any other act not in violation of the laws or at variance with the administrative practice of the requested State.

**4.6** Except as provided in paragraph 1.4, the provisions of the preceding paragraphs shall be construed so as to impose on a Contracting State the obligation to use all legal means and its best efforts to execute a request. A Contracting State may, in its discretion, take measures to obtain and transmit to the other State information which, pursuant to paragraph 1.4, it has no obligation to transmit.

**4.7** The competent authority of the requested State shall allow representatives of the applicant State to enter the requested State to interview individuals and examine books and records with the consent of the individuals contacted.

**4.8** Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to authorities, including judicial or and administrative bodies involved in the determination, assessment, collection, and administration of the taxes which are the subject of this Agreement, the recovery and collection of tax claims, the enforcement or prosecution of tax crimes, or the determination of appeals in respect of such taxes, as well as the oversight of the above. Such authorities shall use the information only for such purposes, and such information may only be disclosed by these authorities in public court proceedings or in judicial decisions.

## **Article 5**

### **Mutual Agreement Procedure**

**5.1** The competent authorities of the Contracting State shall agree to implement a program to carry out the purposes of this Agreement. This program may include, in addition to the exchanges of information specified in Article 4, other measures to improve tax compliance, such as exchanges of technical know-how, development of new audit techniques (including simultaneous examinations and simultaneous criminal investigations in their respective jurisdictions and by their respective competent authorities), identification of new areas of non-compliance, and joint studies of such areas.

**5.2** The competent authorities of the Contracting States shall endeavor to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. In accordance with the foregoing, the competent authorities may agree to a common meaning of a term and may determine when costs are extraordinary for purposes of Article 6.

**5.3** The competent authorities of the Contracting States may communicate with each other directly for the purposes of reaching an agreement under this Article.

## **Article 6**

### **Costs**

**6.1** Unless the competent authorities of the Contracting States otherwise agree, ordinary costs incurred in providing assistance shall be borne by the requested State and extraordinary costs incurred in providing assistance shall be borne by the applicant State.

**Article 7  
Entry Into Force**

**7.1** This Agreement shall enter into force upon an exchange of notes by the duly authorized representatives of the Contracting States confirming their mutual agreement that both sides have met all constitutional and statutory requirements necessary to effectuate this Agreement.

**Article 8  
Modification and Termination**

**8.1** This Agreement may be modified or amended with the agreement of the Contracting State.

**8.2** This Agreement shall remain in force until terminated by one of the Contracting States. Either Contracting State may terminate the Agreement at any time after the Agreement enters into force provided that at least 3 months prior notice of termination has been given through diplomatic channels.

## EXHIBIT C

# **Political Constitution of Peru<sup>(\*)</sup>**

**Enacted on the 29th of December, 1993**

**Published by the  
CONGRESS OF THE REPUBLIC  
September – 2009**

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<sup>(\*)</sup> N.T.: Translated from Spanish into English by Juan Gotelli, Esther Velarde and Pilar Zuazo, members of the staff of the Translation Bureau of the Congress of the Republic of Peru.  
Revised by Mr. Jonathan Potts and Mr. Joe Northover.

# **1993 POLITICAL CONSTITUTION OF PERU**

## **The President of the Democratic Constituent Congress**

Whereas:

As this constitutional draft has been approved by the Democratic Constituent Congress and ratified by a referendum on the 31st of October, 1993,

## **The Democratic Constituent Congress**

Does establish the following Political Constitution of Peru:

## **PREAMBLE**

The Democratic Constituent Congress invoking Almighty God, obeying the mandate of the Peruvian people, and remembering the sacrifice of all the preceding generations of our land, has resolved to enact the following Constitution:

# **POLITICAL CONSTITUTION OF PERU**

## **TITLE I THE PERSON AND THE SOCIETY**

### **CHAPTER I FUNDAMENTAL RIGHTS OF THE PERSON**

#### **Article 1**

The defense of the human person and respect for his dignity are the supreme purpose of the society and the State.

#### **Article 2**

Every person has the right:

1. To life, his identity, his moral, psychical, and physical integrity, and his free development and well-being. The unborn child is a rights-bearing subject in all cases that benefit him.
2. To equality before the law. No person shall be discriminated against on the basis of origin, race, sex, language, religion, opinion, economic status, or any other distinguishing feature.
3. To freedom of conscience and religion, in an individual or collective manner. No person shall be persecuted on the basis of his ideas or beliefs. There is no crime of opinion. Public exercise of any faith is free, insofar as it does not constitute an offense against morals, or a disturbance of the public order.
4. To freedom of information, opinion, expression, and dissemination of thought, whether oral, written, or in images, through any medium of social communication, and without previous authorization, censorship, or impediment, under penalty of law.

Crimes committed by means of books, the press, and any other social media are defined by the Criminal Code and tried in a court of law.

Any action that suspends or closes down any organ of expression or prevents its free circulation constitutes a crime. The rights of information and opinion include those of founding means of communication.

5. To request, without statement of a cause, information he requires, and to receive it from any public entity within the legal term, at its respective cost.

Exception is hereby made of information affecting personal privacy and that expressly excluded by the law or for reasons of national security.

Bank secrecy and the confidentiality of tax filings may be lifted by the request of a judge, the Prosecutor General, or a congressional investigative committee, in accordance with the law and provided that such information refers to a case under investigation.

6. to the assurance that information services, whether computerized or not, whether public or private, will not provide information affecting personal and family privacy.
7. To his honor and good reputation, to personal and family privacy, as well as to his own voice and image.

Every person affected by inaccurate statements or injured in any social medium has the right to demand free, immediate, and proportionate rectification, other legal liabilities notwithstanding.

8. To freedom of intellectual, artistic, technical, and scientific creation, as well as to ownership of such creations and to any benefits derived from them. The State promotes access to culture and encourages its development and dissemination.
9. To the inviolability of his home. No one may enter a dwelling or conduct any investigation or search without authorization from the inhabitant or without a warrant, except in cases of *in flagrante delicto* or serious threat of the perpetration thereof. Exceptions for reasons of health or serious risk are governed by law.
10. To the secrecy and inviolability of private communications and documents.

Communications, telecommunications, or any private correspondence may only be opened, seized, intercepted, or tapped by the authority of a warrant issued by a judge and with all the guarantees provided in the law. Any matter unrelated to the circumstances under examination shall be kept secret.

Private documents obtained in violation of this provision have no legal effect.

Books, receipts, and accounting and administrative documents are subject to inspection or audit by the relevant authority in accordance with the law. Any action thus taken may not include removal or seizure, except by a court order.

11. To choose his place of residence, to move freely throughout the national territory, and to leave the country and return to it, excepting restrictions for reasons of health or due to a court order, or to the application of the Immigration Act.

12. To peaceful assembly without arms. Meetings on any premises, whether private or open to the public, do not require prior notification. Meetings held in squares and public thoroughfares require advance notification by the relevant authority, which may prohibit such meetings solely for proved reasons of safety or public health.
13. To associate and establish foundations and other forms of not-for-profit legal organizations, without prior authorization, and in accordance with the law. These organizations may not be dissolved by administrative resolution.
14. To make contracts for lawful purposes, whenever they do not contravene laws of public order.
15. To work freely, in accordance with the law.
16. To property and inheritance.
17. To participate, individually or in association with others, in the political, economic, social, and cultural life of the Nation. Citizens, in accordance with the law, have the right to elect, remove or revoke public authorities, and to legislative initiative, and referendum.
18. To keep his political, philosophical, religious, or any other type of conviction private, as well as to keep professional secrets.
19. To his ethnic and cultural identity. The State recognizes and protects the ethnic and cultural diversity of the Nation.

Every Peruvian has the right to use his own language before any authority by means of an interpreter. Foreigners enjoy the same right when summoned by any authority.

20. To submit petitions in writing, individually or collectively, before the competent authority, who is obliged to respond to the interested party also in writing within the legally prescribed term, under penalty of law.

Members of the Armed Forces and the National Police may only exercise their right to petition in an individual manner.

21. To his nationality. No one may be stripped of it. Nor may any person be deprived of the right to obtain or renew his passport inside or outside the territory of the Republic.
22. To peace, tranquility, enjoyment of leisure time, and rest, as well as to a balanced and appropriate environment for the development of his life.
23. To self-defense.

24. To freedom and personal security. In consequence:

- a. No one is obliged to do what the law does not command, nor prevented from doing what the law does not prohibit.
- b. No restrictions whatsoever to personal freedom shall be permitted, except in cases provided by the law. Slavery, servitude, and traffic in human beings are prohibited in any form.
- c. There is no imprisonment for debts. This provision does not restrict court orders in the case of contempt regarding child support obligations.
- d. No one shall be prosecuted or convicted for any act or omission that, at the time of its commission, was not previously prescribed in the law expressly and unequivocally as a punishable violation, or did not constitute an offense penalized by law.
- e. Every person has the right to be presumed innocent until proven guilty.
- f. No one may be arrested without a written warrant issued by a judge for a cause or by police authorities in cases of *in flagrante delicto*. The arrested person shall be placed at the disposal of the relevant court within twenty-four hours or within the time required for travel.

In the cases of terrorism, espionage, and illicit drug trafficking, these terms shall not apply.

In such cases, police authorities may make the preventive arrest of those allegedly involved, to last no more than fifteen calendar days. They shall notify the Office of the Prosecutor General and the judge, and the latter may assume jurisdiction before that period of time expires.

- g. No one may be held incommunicado, except where it is considered indispensable for the resolution of a crime and in the form and for the time provided by law. The authority is obliged by law to report, without delay and in writing, the place where the individual under arrest is detained.
- h. No one shall be a victim of moral, psychical, or physical violence, nor be subjected to torture or inhuman or humiliating treatment. Any individual may immediately request a medical examination for the injured person or someone who is unable to appeal to the authorities by himself. Statements obtained by means of violence are null and void. Whoever employs such violence shall be held liable.

### **Article 3**

The enumeration of rights established in this chapter does not exclude others guaranteed by the Constitution, or others of a similar nature or those based on the dignity of the human being, nor those based on the principles of sovereignty of the people, the democratic rule of law, or the republican form of government.

## **CHAPTER II**

### **SOCIAL AND ECONOMIC RIGHTS**

### **Article 4**

The community and the State extend special protection to children, adolescents, mothers, and the elderly in situation of abandonment. They also protect the family and promote marriage, which are recognized as natural and fundamental institutions of society.

The form of marriage and the grounds for separation and dissolution are governed by law.

### **Article 5**

The stable union between a man and a woman, free of any impediment to matrimony, who establishes a common-law marriage, creates community property subject to a marital assets regime, where applicable.

### **Article 6**

The national population policy aims to spread and promote responsible parenthood. It recognizes the right of families and individuals to decide. In this spirit, the State guarantees suitable education and information programs and access to such means, provided they do not harm life or health.

It is the right and duty of parents to nourish, educate, and protect their children. Children have the duty to respect and aid their parents.

All children have the same rights and duties. Any mention of the civil status of parents or of the nature of their relationship to the children in civil records or any other identification document is prohibited.

### **Article 7**

Everyone has the right to protection of his health, his family environment, and his community, just as it is his duty to contribute to their development and defense. Any individual unable to care for himself due to physical or mental disability has the right to respect for his dignity and to a regime of protection, care, rehabilitation, and security.

### **Article 8**

The State fights and punishes illicit drug trafficking. Likewise, it regulates the use of social drugs.

## **Article 9**

The State determines the national health policy. The Executive Branch sets standards for and oversees its enforcement, and it is responsible for drafting and directing it in a pluralistic, decentralizing manner to facilitate equal access for everyone to health services.

## **Article 10**

The State recognizes the universal and progressive right of each person to social security for his protection from contingencies specified by law, and for the elevation of his quality of life.

## **Article 11**

The State guarantees free access to health benefits and pensions through public, private, or joint agencies. It also oversees their efficient operation.

The law establishes the agency of the national government that manages the pensions systems under the charge of the State.<sup>\*</sup>

## **Article 12**

Social security funds and reserves are intangible. Resources are applied in the manner and under the responsibilities set forth by law.

## **Article 13**

The aim of education is the comprehensive development of the human being. The State recognizes and guarantees freedom of education. Parents have the duty to educate their children and the right to choose their schools and participate in the educational process.

## **Article 14**

Education promotes knowledge, learning, and the practice of the humanities, science, technology, the arts, physical education, and sports. It prepares individuals for life and work and encourages solidarity.

The State promotes the scientific and technological development of the country.

Ethical and civic training and the teaching of the Constitution and human rights are mandatory in all civil and military educational processes. Religious education is provided in keeping with freedom of conscience.

Education is provided, at all levels, in conformity with constitutional principles and the purposes of the relevant educational institution.

Communication media shall cooperate with the State in education and in moral and cultural formation.

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<sup>\*</sup> Paragraph added by Law No. 28389, published on November 17th, 2004.

## **Article 15**

The teaching profession in public schools is a public service career. The law sets forth the requirements for serving as a principal or a teacher in a school, as well as his rights and obligations. The State and the society ensure their continuing evaluation, training, professionalization, and promotion.

The student is entitled to a type of education that respects his identity, as well as to proper psychological and physical treatment.

Any person or corporate entity has the right to promote and operate educational institutions, and to transfer the ownership of such institutions, in accordance with the law.

## **Article 16**

Both the educational system and its governing regulations are decentralized.

The State coordinates the educational policy. It formulates the general guidelines of school curricula, as well as the minimum requirements for the organization of educational centers. It oversees their compliance and the quality of education.

The State ensures that no one is prevented from receiving appropriate education on grounds of economic status, or mental or physical disabilities.

Education enjoys priority in the allocation of ordinary resources in the Budget of the Republic.

## **Article 17**

Early childhood, primary, and secondary education are compulsory. In public schools, education is free. In public universities, the State guarantees the right to free education to those students who maintain a satisfactory performance, and lack the economic resources needed to cover the cost of education.

In order to ensure the greatest number of educational offerings and to help those who cannot afford their own education, the law sets forth the method of subsidizing private education in any of its forms, including communal and cooperative education.

The State promotes the establishment of schools, wherever people may require them.

The State guarantees the eradication of illiteracy. It also encourages bilingual and intercultural education, in accordance with the particular characteristics of each area. It preserves the diverse cultural and linguistic manifestations throughout the country. It promotes national integration.

## **Article 18**

The aim of university education is to support vocational training, the dissemination of culture, intellectual and artistic creativity, and scientific and technological research. The State guarantees academic freedom and rejects intellectual intolerance.

Universities are supported by public and private entities. The law sets the conditions for the authorization of their operation.

The university is a community consisting of faculty members, students, and alumni. Trustees of the university also participate in the community, in accordance with the law.

Every university is autonomous in its regulations, governance, and academic, administrative and financial regimes. Universities are governed by their own statutes within the framework of the Constitution and the law.

## **Article 19**

Universities, colleges, and all other educational institutions established in accordance with the law enjoy exemption from all direct and indirect taxes levied on assets, activities, and services concerning their educational and cultural purposes. On the subject of import tariffs, a special arrangement for allocation of taxes may be established for specific assets.

Scholarships and grants for educational purposes shall be exempt from taxes and enjoy tax benefits in the manner and within the limits prescribed by law.

The law sets forth the tax provisions that will govern the above-mentioned institutions, as well as the requirements and conditions to be met by cultural centers that, by way of exception, may enjoy the same benefits.

For private educational institutions that generate revenues legally defined as profits, the income tax may be applied.

## **Article 20**

Professional associations are autonomous institutions recognized by public law. The law determines those cases where membership in an association is mandatory.

## **Article 21**

Archeological sites and remains, constructions, monuments, places, bibliographical documents and archival materials, art objects, and tokens of historical value, expressly declared cultural assets and those provisionally presumed to be so, are the cultural heritage of the Nation, irrespective of whether they are private or public property. They are protected by the State.

The law guarantees ownership of such cultural heritage.

In accordance with the law, private participation is encouraged in the preservation, restoration, exhibition, and dissemination of such objects, as well as their return to the country when illegally taken abroad.

### **Article 22**

Work is a right and a duty. It is the foundation for social welfare and a means of self-realization.

### **Article 23**

Work, in its diverse forms, is a matter of priority concern for the State, which provides special protection for working mothers, minors, and persons with disabilities.

The State promotes conditions for social and economic progress, in particular through policies aimed at encouraging productive employment and work education.

No working relation can limit the exercise of constitutional rights, nor disavow or disrespect the dignity of workers.

No one is obliged to work without pay or without his free consent.

### **Article 24**

The worker is entitled to adequate and fair compensation that ensures both himself and his family material and spiritual well-being.

Payment of wages and social benefits for the worker takes priority over any other obligation of the employer.

Minimum wages are regulated by the State with participation of representative organizations of workers and employers.

### **Article 25**

The normal workday is eight hours, or the normal workweek is forty-eight hours, at the longest. In the case of cumulative or atypical workdays, the average number of work hours during an equivalent period may not exceed that maximum.

Workers have the right to weekly and annual paid vacations. This benefit and compensation are regulated by law or agreement.

### **Article 26**

The following principles must be respected in labor relationships:

1. Equal opportunity without discrimination.
2. Inalienability of the rights recognized by the Constitution and the law.

3. Interpretation in favor of the worker in cases of insurmountable doubt on the meaning of a regulation.

### **Article 27**

The law grants the worker suitable protection against unfair dismissal.

### **Article 28**

The State recognizes the right of workers to join trade unions, to engage in collective bargaining, and to strike. It ensures their democratic exercise by:

1. Guaranteeing freedom to form trade unions.
2. Encouraging collective bargaining and promoting peaceful settlement to labor disputes.

Collective agreements are binding in the matters concerning their terms.

3. Regulating the right to strike so that it is exercised in harmony with the social interest. It defines exceptions and limitations.

### **Article 29**

The State recognizes the right of workers to share in enterprise profits and promotes other forms of participation.

## **CHAPTER III POLITICAL RIGHTS AND DUTIES**

### **Article 30**

All Peruvians above the age of eighteen are citizens. To exercise citizenship, they must be registered to vote.

### **Article 31**

Citizens are entitled to take part in public affairs by means of referendum, legislative initiative, removal or revocation of authorities, and demands for accountability. They also have the right to be elected and to freely elect their representatives in accordance with the provisions and procedures set forth by the organic act.

It is a right and a duty of residents to participate in the municipal government of their jurisdiction. The law governs and promotes direct and indirect mechanisms of this participation.

Every citizen has the right to vote in the enjoyment of his civil capacity. To exercise this right, he is required to be properly registered.

Voting is personal, equal, free, secret, and compulsory up to the age of seventy years and optional after this age.

The law establishes the mechanisms to guarantee the neutrality of the State during elections and citizen participation processes.

Any act that prohibits or abridges the exercise of citizen rights shall be null and punishable\*

## **Article 32**

A referendum may be held on the following:

1. Partial or complete amendment of the Constitution.
2. Approval of binding rules.
3. Municipal ordinances.
4. Matters regarding the decentralization process.

Abolition or abridgement of the fundamental rights of the person may not be submitted to a referendum, neither may tax and budget rules nor international treaties in force.

## **Article 33**

Exercise of citizenship may be suspended by:

1. Judicial interdiction.
2. Sentence of imprisonment.
3. Sentence of disqualification from political rights.

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\* Article amended by Law No. 28480, published on March 30th, 2005. Before the amendment, this article stated:

Citizens are entitled to take part in public affairs by means of referendum, legislative initiative, removal or revocation of authorities, and demands for accountability. They also have the right to be elected and to freely elect their representatives in accordance with the provisions and procedures set forth by the organic act.

It is a right and a duty of residents to participate in the municipal government of their jurisdiction. The law governs and promotes the direct and indirect mechanisms of this participation.

Every citizen has the right to vote in the enjoyment of his civil capacity.

Voting is personal, equal, free, secret, and compulsory up to the age of seventy years and optional after this age.

Any act that prohibits or abridges the exercise of the rights of the citizen shall be null and punishable.

## **Article 34**

Members of the Armed Forces and the National Police are entitled to vote and to citizen participation as governed by law. They may not be elected, participate in political activities or demonstrations, or engage in acts of proselytism while they are on active duty, in accordance with the law.\*

## **Article 35**

Citizens may exercise their rights individually or through political organizations, such as political parties, movements, or alliances, in accordance with the law. Such organizations contribute to the development and expression of the will of the people. Their entry in the proper register confers legal personhood upon such entities.

The law sets forth the rules aiming to ensure the proper democratic operation of political parties, transparency concerning the origin of their financial recourses, and free access to the State-owned social media proportional to the last general election results.

## **Article 36**

The State recognizes political asylum. It accepts the status of the asylee determined by the State granting asylum. In cases of expulsion, the asylee shall not be returned to the country whose government persecutes him.

## **Article 37**

The Executive Branch is the sole competent authority for granting extradition following an opinion by the Supreme Court, in accordance with the law and treaties, and in compliance with the principle of reciprocity.

Extradition shall not be granted when it is determined that the request was motivated by persecution or punishment on grounds of religion, nationality, opinion, or race.

Those persecuted for political offenses or related acts are excluded from extradition. Genocide, assassination of a political figure, or crimes of terrorism are not considered as such.

## **Article 38**

All Peruvians have the duty to honor Peru and to protect national interests, as well as to respect, obey, and defend the Constitution and the code of laws of the Nation.

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\* Article amended by Law No. 28480, published on March 30th, 2005. Before the amendment, this article stated:

Members of the Armed Forces and the National Police on duty may not elect or be elected. Any other disqualification does not exist, nor may it be established.

## **CHAPTER IV PUBLIC SERVICE**

### **Article 39**

All public officials and civil servants are in the service of the Nation. The President of the Republic is the highest official in the service of the Nation, followed by, in this order of importance: Congressmen, members of the Cabinet, members of the Constitutional Court and the Council of the Magistracy, Justices of the Supreme Court, the Prosecutor General of the Nation and the Ombudsman, in the same category, and the representatives of the decentralized agencies and Mayors, in accordance with the law.

### **Article 40**

The law regulates the entry into the civil service, as well as the rights, duties, and responsibilities of public servants. Officials holding political posts and posts of trust are not included in the civil service. No official or civil servant may hold more than one remunerated office, with the exception of an additional teaching position.

Workers employed in state-owned enterprises or public and private joint-ventures are not included in the civil service.

Incomes received for any purpose by senior officials and other civil servants, as the law prescribes by virtue of their posts, must be published periodically in the official gazette.

### **Article 41**

Officials and public servants whom the law specifies or who manage or handle State funds or funds of bodies financially supported by the State shall make a statement of property owned and of income upon assuming, holding, and leaving office. The corresponding publication is to be made in the official gazette under the terms and conditions prescribed by the law.

When there is presumption of illicit enrichment, the Prosecutor General shall, by complaint from third parties or by virtue of his office, bring charges before the court.

The law sets forth the responsibilities of officials and civil servants, as well as the duration of their ineligibility for public office.

The length of the statute of limitations is doubled for crimes against State assets.

### **Article 42**

The rights of civil servants to unionize and strike are acknowledged by law. State officials with decision-making powers, those in posts of trust or of management, as well as members of the Armed Forces and the National Police are not included herein.

## **TITLE II THE STATE AND THE NATION**

### **CHAPTER I THE STATE, THE NATION, AND THE TERRITORY**

#### **Article 43**

The Republic of Peru is democratic, social, independent, and sovereign.

The State is one and indivisible.

Its form of government is unitary, representative, and decentralized. It is organized pursuant to the principle of separation of powers.

#### **Article 44**

The fundamental duties of the State are to defend the national sovereignty, to guarantee full enjoyment of human rights, to protect the population from threats to their security, and to promote general welfare based on justice and the comprehensive and balanced development of the Nation.

It is also the duty of the State to establish and implement the border policy and to promote integration, in particular of Latin America, as well as the development and cohesiveness of border zones, in accordance with the foreign policy.

#### **Article 45**

The power of the State emanates from the people. Those who exercise it do so within the limitations and under the responsibilities set forth by the Constitution and the law.

No individual, organization, branch of the Armed Forces, National Police force, or group of people may arrogate to themselves the exercise of such power. To do so constitutes rebellion or sedition.

#### **Article 46**

No one owes obedience to a usurper government or to anyone who assumes public office in violation of the Constitution and the law.

The civil population has the right to insurrection in defense of the constitutional order.

Acts of those who usurp public office are null and void.

### **Article 47**

The defense of State interests is the responsibility of the State Attorneys in accordance with the law. The State is exempted from payment of judicial costs and expenses.

### **Article 48**

The official languages of the State are Spanish and, wherever they predominate, Quechua, Aymara, and other native tongues, in accordance with the law.

### **Article 49**

The capital of the Republic of Peru is the city of Lima. Its historical capital is the city of Cusco.

The symbols of the Nation are the flag with three vertical stripes in red, white, and red; the coat of arms, and the national hymn, as established by law.

### **Article 50**

Within an independent and autonomous system, the State recognizes the Catholic Church as an important element in the historical, cultural, and moral formation of Peru, and lends the church its cooperation.

The State respects other denominations and may establish forms of collaboration with them.

### **Article 51**

The Constitution prevails over any other legal rule, the laws over lower level provisions, and so on successively. Publication is essential to the enforcement of any legal rule of the State.

### **Article 52**

All those born within the territory of the Republic are Peruvians by birth, as well as those born abroad of a Peruvian father or mother and duly registered while still minors.

Those who acquire the nationality by naturalization or choice are also Peruvians, as long as they maintain residency in Peru.

### **Article 53**

Ways of acquisition or recovery of nationality are determined by law.

Peruvian nationality cannot be lost, unless by express renunciation before a competent Peruvian authority.

### **Article 54**

The territory of the Republic is inalienable and inviolable. It includes the soil, the subsoil, the maritime dominion, and the superjacent airspace.

The maritime dominion of the State includes the sea adjacent to its coasts, as well as the seabed and subsoil thereof, extending out to a distance of 200 nautical miles measured from the baselines established by law.

In its maritime dominion, the State exercises sovereignty and jurisdiction, without prejudice to the freedoms of international communication, in accordance with the law and treaties ratified by the State.

The State exercises sovereignty and jurisdiction over the airspace of its territory and its adjacent sea up to the limit of 200 miles, without prejudice to the freedoms of international communication, in conformity with the law and treaties ratified by the State.

## **CHAPTER II** **TREATIES**

### **Article 55**

Treaties formalized by the State and in force are part of national law.

### **Article 56**

Treaties must be approved by the Congress before their ratification by the President of the Republic, provided that they concern the following matters:

1. Human rights.
2. Sovereignty, dominion, or integrity of the State.
3. National defense.
4. Financial obligations of the State.

Treaties that create, modify, or eliminate taxes that require modification or repeal of any law, or that require legislative measures for their application, must also be approved by the Congress.

### **Article 57**

The President of the Republic may formalize or ratify treaties or accede to them without previous approval by the Congress in matters not contemplated in the preceding article. In all such cases, the President must notify the Congress.

When a treaty affects constitutional provisions, it must be approved by the same procedure established to reform the Constitution prior to its ratification by the President of the Republic.

Denunciation of treaties is within the power of the President of the Republic, who has the duty to notify the Congress. In the case of treaties subject to approval by Congress, such denunciation requires its previous approval.

## **TITLE III THE ECONOMIC SYSTEM**

### **CHAPTER I GENERAL PRINCIPLES**

#### **Article 58**

Private initiative is free. It is exercised within a social market economy. Under this system, the State guides the development of the country and it is principally active in promoting employment, health, education, security, public services, and infrastructure.

#### **Article 59**

The State promotes the creation of wealth and guarantees the freedom to work, as well as free enterprise, trade, and industry. The exercise of these freedoms must not be harmful to the public morals, health, or safety. The State provides opportunities to those sectors suffering from unequal opportunity for advancement. In this spirit, it promotes small businesses of all types.

#### **Article 60**

The State recognizes economic pluralism. The national economy is sustained in the coexistence of diverse forms of ownership and enterprise.

Authorized solely by express law, the State may subsidiarily engage in business activities, directly or indirectly, for reasons of high public interest or manifest national convenience.

Business activity receives the same legal treatment, whether public or private.

#### **Article 61**

The State facilitates and oversees free competition. It fights any practice that would limit it and the abuse of dominant or monopolistic positions. No law or arrangement may authorize or establish monopolies.

The press, radio, television, and other means of expression and social communication and, in general, enterprises, goods and services related to freedom of speech and communication, cannot be objects of exclusivity, monopoly, or hoarding, directly or indirectly, by the State or private parties.

## **Article 62**

The freedom of contract guarantees that parties may validly negotiate, according to the rules in effect at the time of the contract. Contractual terms may not be modified by laws or any other provision whatsoever. Conflicts deriving from contractual relations may be resolved solely through arbitration or judicial recourse, in accordance with the protective mechanisms provided for in the contract, or established by law.

By means of contract law, the State may provide guarantees and grant security. These may not be modified legislatively, without prejudice to the protection provided in the preceding paragraph.

## **Article 63**

National and foreign investments are subject to the same conditions. The production of goods, services, and foreign exchange are free. If another country or other countries adopt protectionist or discriminatory measures that are detrimental to the national interest, the State may, in defense of it, adopt similar measures.

All contracts of the State and public corporations with resident foreign nationals are subject to the national laws and courts of competent jurisdiction, and surrender to any diplomatic claim. Contracts of a financial nature may be exempted from national jurisdiction.

The State and other public corporations may submit controversies arising from their contractual relations to courts specially established by virtue of treaties in effect. They may also submit them to national or international arbitration in the manner provided by law.

## **Article 64**

The State guarantees the free possession and disposition of foreign currency.

## **Article 65**

The State defends the interests of consumers and clients. For this purpose, it guarantees the right to information on goods and services available to them on the market. Likewise, it especially watches over the health and security of the population.

# **CHAPTER II**

## **THE ENVIRONMENT AND THE NATIONAL RESOURCES**

## **Article 66**

Natural resources, renewable and non renewable, are patrimony of the Nation. The State is sovereign in their utilization.

An organic law fixes the conditions of their use and grants them to private individuals. Such a concession grants the title holders a real right subject to those legal regulations.

### **Article 67**

The State determines the national environmental policy. It also promotes the sustainable use of its natural resources.

### **Article 68**

The State is obliged to promote the conservation of biological diversity, and protected natural areas.

### **Article 69**

The State promotes the sustainable development of the Amazonia by means of appropriate legislation.

## **CHAPTER III PROPERTY**

### **Article 70**

The right to property is inviolable. The State guarantees it. It is exercised in harmony with the common good, and within the limits of the law. No one shall be deprived of his property, except, exclusively, on grounds of national security or public need determined by law, and upon cash payment of the appraised value, which must include compensation for potential damages. Proceedings may be instituted before the Judiciary to challenge the property value established by the State in the expropriatory procedure.

### **Article 71**

With respect to property, foreign nationals, whether they are persons or corporate entities, fall under the same conditions as Peruvians. Therefore, they may in no instance invoke exception or diplomatic protection.

However, within a distance of fifty kilometers from the borders, foreigners may not acquire or possess under any title, directly or indirectly, mines, lands, woods, water, fuel, or energy sources, whether individually or in partnership, under penalty of losing that so acquired right to the State. The sole exception involves cases of public need expressly determined by executive decree and approved by the Cabinet, in accordance with the law.

### **Article 72**

The law may temporarily, solely on grounds of national security, set forth specific restrictions and bans on acquisition, possession, exploitation, and transfer of certain types of property.

### **Article 73**

Public property is inalienable and may not be prescribed. Property available for public use may be granted to private parties, in accordance with the law, for its economic development.

## **CHAPTER IV TAX AND BUDGET REGIME**

### **Article 74**

Taxes are created, modified, or abolished. Exemptions are granted exclusively by law or by legislative decree in case of delegation of powers, except for tariffs and rates, which are regulated by an executive decree.

Regional and local governments may create, modify, and eliminate taxes and rates, or exempt the same within their jurisdiction and within the limits defined by law. In exercising its taxing power, the State shall respect the principle of the legal reservation and those principles concerning equality and respect for basic rights of the person. No tax shall have a confiscatory nature.

Budget Acts and emergency decrees shall not contain provisions on taxes. Laws concerning annual taxes come into force on the first day of January of the year following their enactment.

Tax provisions set forth in violation of this article are null and void.\*

### **Article 75**

The State guarantees payment of public debt only when contracted by constitutional governments, in accordance with the Constitution and the law.

The domestic and foreign debt operations of the State are approved in accordance with the law.

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\* Article amended by Law No. 28390, published on November 17th, 2004. Before the amendment, this article stated:

*Taxes are set up, modified, or abolished. Exemptions are granted exclusively by law or by legislative decree in case of delegation of powers, except for tariffs and rates, which are regulated by executive decree. Local governments may set up, modify, and eliminate taxes and rates, or exempt the same within their jurisdiction and within the limits defined by law. In exercising its taxing power, the State shall respect the principle of the legal reservation and those principles concerning equality and respect for basic rights of the person. No tax shall have a confiscatory nature.*

*Emergency decrees shall not contain provisions on taxes. Laws concerning annual taxes come into force on the first day of January of the year following their enactment. Budget Acts shall not contain provisions on taxes.*

*Tax provisions set forth in violation of this article are null and void.*

Municipalities may undertake credit transactions charged against their own resources and assets without requiring legal authorization.

### **Article 76**

Public works and acquisition of supplies with public funds or resources are compulsorily based on contracts and public bidding, as are the acquisition and sale of assets.

The contracting of services and projects, whose importance and amount are determined by the Budget Act is done by public bidding. The law sets forth the procedures, exceptions and respective responsibilities.

### **Article 77**

The economic and financial administration of the State is governed by the budget passed annually by Congress. The budget structure of the public sector consists of two parts: the central government and decentralized agencies.

The budget allocates public resources fairly. Its programming and implementation depend on efficiency criteria that concern basic social necessities and decentralization. In accordance with the law, every circumscription shall receive an adequate share of the total income and revenue collected by the State for the utilization of natural resources in each zone as a natural resource royalty (*canon*).\*

### **Article 78**

The President of the Republic sends the Budget bill to the Congress each year with a deadline expiring on August 30th.

On the same date, he also sends the national debt and financial stability bills.

The Budget bill shall be effectively balanced.

Loans from the Central Reserve Bank of Peru or the Bank of the Nation are not considered fiscal revenue.

Loans shall not cover current expenditure.

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\* Article amended by Law No. 26472, published on June 13th, 1995. Before the amendment, this article stated:

*The economic and financial administration of the State is governed by the budget passed annually by Congress.*

*The budget structure of the public sector consists of two parts: the central government and decentralized agencies.*

*The budget allocates public resources fairly. Its programming and implementation depend on efficiency criteria that concern basic social necessities and decentralization.*

*In accordance with the law, every circumscription shall receive an adequate share of the tax income collected for the utilization of natural resources in each zone as a natural resource royalty (canon).*

The Budget shall not be passed without an appropriation for the servicing of public debt.

### **Article 79**

Members of Congress have no initiative for creating or increasing public spending, except on matters of their budget.

The Congress may not pass taxes for predetermined purposes, except upon request of the Executive Branch.

In any other case, tax laws concerning benefits or exemptions require a previous report of the Ministry of Economy and Finance.

Only by express law, passed by two-thirds of congressmen, may a special tax treatment for a specific zone of the country be selectively and temporarily extended.

### **Article 80**

The Minister of Economy and Finance sustains the income statement before the Plenary Assembly of Congress. Each minister maintains the expenditure statement of his own sector; prior to that, they shall sustain the outcomes and goals of the previous year budget execution, and the budget implementation progress of the current fiscal year.

Likewise, the Chief Justice of the Supreme Court, the Prosecutor General of the Nation, and the President of the National Election Board sustain the statements of their own institutions.

If the enrolled Budget bill is not referred to the Executive Branch by November 30th, the Executive original draft bill comes into effect and is enacted by legislative decree.

The supplemental credits, additional expenditure and transfers of items are handled before Congress in the same manner as the Budget Act. During the congressional recess, they are handled in the Permanent Assembly. To pass, the votes of three-fifths of the legal number of its members are required.

### **Article 81**

The General Account of the Republic, accompanied by the audit report of the Office of the Comptroller General, is submitted by the President of the Republic to the Congress by August 15th of the year following the implementation of the budget.

The General Account is examined and reported upon by a review committee by October 15th. Congress shall vote on its passage at the latest on October 30th. If the Congress fails to vote within this period, the review committee shall submit its opinion to the Executive Branch so that it may enact a legislative decree that includes the General Account.\*

### **Article 82**

The Office of the Comptroller General is a decentralized body of public law that enjoys autonomy in accordance with its organic act. It is the highest body of the National Control System. It is responsible for overseeing the respective legalities of the implementation of the national Budget, public debt operations, and activities of institutions subject to its control.

The Congress appoints the Comptroller General for seven years upon recommendation from the Executive Branch. He may be removed by Congress for gross misconduct.

## **CHAPTER V CURRENCY AND BANKING**

### **Article 83**

The law determines the monetary system of the Republic. Issuance of bills and coins is under the exclusive power of the State. Such power is exercised through the Central Reserve Bank of Peru.

### **Article 84**

The Central Bank is a corporate entity under public law. It is autonomous in conformity with its organic act.

Its aim is to preserve monetary stability. Its functions are: to regulate the currency and credit of the financial system, to manage the international reserve under its responsibility, and to perform other functions as provided in its organic act.

The Bank accurately and periodically informs the country about the state of the national finances under the responsibility of its Board of Directors.

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\* Article amended by Law No. 29401, published on September 8th, 2009. Before the amendment, this article stated:

*The General Account of the Republic, accompanied by the audit report of the Office of the Comptroller General, is submitted by the President of the Republic to Congress by November 15th of the year following the implementation of the budget.*

*The General Account is examined and reported upon by a review committee within the ninety days following its submission. Congress shall vote on its passage within thirty days. If Congress fails to vote within this period, the review committee submits its opinion to the Executive branch so that it may enact a legislative decree that includes the General Account.*

The Bank may not grant financing to public funds, except for the purchase on the secondary market of securities issued by the Treasury within the limits set forth by its organic act.

### **Article 85**

The Bank may conduct credit operations and formalize agreements, in order to cover temporary imbalances in its international reserves.

A legal authorization is required, when the amount of such operations or agreements exceeds the limit as set forth in the Budget of the public sector, which must be reported to Congress.

### **Article 86**

The Bank is managed by a board of directors consisting of seven members. The Executive Branch shall appoint four members, including the President, who must be ratified by the Congress. Likewise, Congress votes the other three members through an absolute majority of the legal number of its members.

All directors of the Bank are appointed for the same constitutional term as the President of the Republic. They do not represent any particular entity or interest. Congress may remove them for gross misconduct. In the event of such removal, the new directors hold office for the remaining constitutional term.

### **Article 87**

The State encourages and guarantees savings. The law establishes the obligations and limits of enterprises that collect savings from the public, as well as the mode and extent of such guarantees.

The Superintendence of Banking, Insurance, and Private Pension Fund Management Firms is responsible for control over banking, insurance, and private pension fund management firms, other companies collecting deposits from the public, and those that conduct related and similar operations, as set forth in law.

The law establishes the organization and functional autonomy of the Superintendence of Banking, Insurance, and Private Pension Fund Management Firms.

The Executive Branch appoints the Superintendent of Banking, Insurance, and Private Pension Fund Management Firms for the period corresponding to its constitutional term of office. The Congress ratifies him.\*

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\* Article amended by Law No. 28484, published on April 5th, 2005. Before the amendment, this article stated:

*The State encourages and guarantees savings. The law provides for the obligations and limits of enterprises that collect savings from the public, as well as the mode and extent of such guarantees.*

*The Superintendence of Banking and Insurance is responsible for control over banking and insurance firms, other companies collecting deposits from the public, and those that conduct related and similar operations, as set forth in law.*

## **CHAPTER VI THE AGRICULTURAL REGIME AND RURAL AND NATIVE COMMUNITIES**

### **Article 88**

The State preferentially supports agricultural development and guarantees the right to ownership of the land, whether private, communal, or in any other form of partnership. The law may define boundaries and land area based on the features of each zone.

According to legal provision, abandoned land reverts to State ownership, to be placed on the market.

### **Article 89**

The rural and native communities have legal existence and are corporate entities.

They are autonomous in their organization, community work, and the use and free disposal of their lands, as well as in the economic and administrative aspects within the framework provided by law. The ownership of their lands may not prescribe, except in the case of abandonment described in the preceding article.

The State respects the cultural identity of the rural and native communities.

## **TITLE IV THE STRUCTURE OF THE STATE**

### **CHAPTER I THE LEGISLATIVE BRANCH**

### **Article 90**

The Legislative Branch shall be vested in Congress, which has a single chamber.

There are 130 congressmen, elected for terms of five years through an election process organized in accordance with the law. Candidates for the presidency may not be among the lists of congressional candidates. Candidates for vice presidencies may simultaneously be congressional candidates.

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*The law establishes the organization and functional autonomy of the Superintendence of Banking and Insurance.*

*The Executive Branch appoints the Superintendent of Banking and Insurance for the period corresponding to his constitutional term of office. Congress ratifies him.*

To be elected congressman, one must be Peruvian by birth, have attained the age of twenty-five years, and enjoy the right to vote.\*

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**Note: Following transitory provisions are included in Law No. 29402, published on September 8th, 2009:**

**SPECIAL TRANSITORY PROVISION**

*Third. The National Election Board allocates four seats for the provinces of Lima, without affecting the existing national apportionment and the other six, in accordance with the law.*

**TRANSITORY PROVISION**

*Single. This constitutional reform shall come into effect as of the 2011 electoral process.*

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**Article 91**

The following persons may not be elected members of the national parliament if they have not resigned their offices six (6) months before the election:

1. Ministers and Deputy Ministers, and the Comptroller General.
2. Members of the Constitutional Court, the National Council of the Magistracy, the Judicial Branch, the Office of the Prosecutor General, the National Election Board, and the Ombudsman.
3. The President of the Central Reserve Bank, the Superintendent of Banking, Insurance, and Private Pension Fund Management Firms, and the National Superintendent of Tax Administration.
4. Members of the Armed Forces and the National Police on active duty.
5. Other individuals as provided in the Constitution.\*

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\* Article amended by Law No. 29402, published on September 8th, 2009. Before the amendment, this article stated:

*The Legislative Branch shall be vested in Congress, which has a single chamber.*

*There are 120 congressmen, elected for terms of five years through an election process organized in accordance with the law. Candidates for the presidency may not be among the lists of congressional candidates. Candidates for vice presidencies may simultaneously be congressional candidates.*

*To be elected congressman, one must be Peruvian by birth, have attained the age of twenty-five years, and enjoy the right to vote.*

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\* Article amended by Law No. 28607, published on October 4th, 2005. Before the amendment, this article stated:

*The following persons may not be elected congressmen if they have not left office six months before the election:*

1. Ministers and Deputy Ministers, the Comptroller General, and regional authorities.
2. Members of the Constitutional Court, the National Council of the Magistracy, the Judicial branch, the Office of the Prosecutor General, the National Election Board, and the Ombudsman.
3. The President of the Central Reserve Bank, the Superintendent of Banking, Insurance, and Private Pension Fund Management Firms, and the National Superintendent of Tax Administration.\*

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## **Article 92**

The office of congressman is a full-time job. Therefore, members are prohibited from holding any other office, profession, or occupation during the time in which Congress operates.

The term of office for congressman is incompatible with any other public office, except that of minister and, with prior authorization of Congress, the participation in select committees on international affairs.

The office of congressman is likewise incompatible with positions such as manager, proxy, representative, trustee, attorney, majority shareholder, or member of the board of directors of enterprises that have work, supply, or provision contracts with the State or that manage public revenues or render public services.

The office of congressman is incompatible with similar positions in enterprises that receive concessions from the State during the term of office of the congressman, as well as in enterprises of the financial credit system supervised by the Superintendence of Banking, Insurance, and Private Pension Fund Management Firms.\*

## **Article 93**

Congressmen represent the Nation. They are not subject to any binding mandate or interpellation.

They are not responsible to any authority or jurisdictional body for votes cast or opinions expressed in the exercise of their functions.

Congressmen may not be tried or arrested without prior authorization from Congress or the Permanent Assembly, from the time of their election to a month after terminating their office, except in cases of *in flagrante delicto*, whereupon they are placed at the disposal of Congress or its Permanent Assembly within twenty-four hours to determine whether their imprisonment and prosecution may be authorized or not.

## **Article 94**

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\* *Subparagraph amended by Law No. 28484, published on April 5th, 2005. Before the amendment, this subparagraph stated:*

*The President of the Central Reserve Bank, the Superintendent of Banking and Insurance, the Superintendent of Tax Administration, Superintendent of National Customs, and the Superintendent of Private Pension Fund Management.*

4. *Members of the Armed Forces and the National Police on active duty.*

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\* *Last paragraph of article 92 amended by Law No. 28484, published on April 5th, 2005. Before the amendment, this paragraph stated:*

*The office of congressman is incompatible with similar positions in enterprises that receive concessions from the State during the term of office for the congressman, as well as in enterprises of the financial credit system supervised by the Superintendence of Banking and Insurance.*

Congress drafts and passes its own Standing Rules, which have the force of law. It also elects members to serve on the Permanent Assembly and committees, defines the organization and functions of parliamentary groups, manages its finances, approves its budget, appoints and removes its officers and employees, and grants them benefits in accordance with the law.

### **Article 95**

The legislative mandate is non renounceable.

The disciplinary penalties imposed by Congress on its members, when involve suspension from their duties, may not exceed 120 days of the legislative session.

### **Article 96**

Any member of Congress may ask Ministers, the National Election Board, the Comptroller General, the Central Reserve Bank, the Superintendence of Banking, Insurance, and Private Public Fund Management Firms, the regional and local governments, and other institutions as provided by law for any information as he deems necessary.\*

The request must be made in writing and be in conformity with the Standing Rules of Congress. Failure to respond results in legal liability.

### **Article 97**

Congress may initiate investigations on any matter of public interest. Upon request, appearances before the committees responsible for such investigations are compulsory, under the same requirements as judicial proceedings.

In order to accomplish their purposes, such committees may have access to any information, which may entail lifting bank secrecy and the confidentiality of tax filings; except for information affecting personal privacy. The conclusions of the committees are not binding to jurisdictional bodies.

### **Article 98**

The President of the Republic is obliged to place at the disposal of the Congress those members of the Armed Forces and the National Police requested by the President of Congress.

The Armed Forces and the National Police shall not enter the premises of Congress without authorization from its President.

### **Article 99**

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*\*\* First paragraph of article 96 amended by Law No. 28484, published on April 5th, 2005. Before the amendment, this paragraph stated:*

*Any member of Congress may ask Ministers, the National Election Board, the Comptroller General, the Central Reserve Bank, the Superintendence of Banking and Insurance, the local governments, and other institutions as provided by law for any information as he deems necessary.*

It is the duty of the Permanent Assembly to accuse before Congress: the President of the Republic, members of Congress, Ministers, members of the Constitutional Court, members of the National Council of the Magistracy, the Justices of the Supreme Court, Supreme Prosecutors, the Ombudsman, and the Comptroller General, for any violation of the Constitution or any crime committed during the performance of their duties and for up to five years after they have left office.

### **Article 100**

It is the duty of the Congress, without participation of the Permanent Assembly, to decide whether or not to suspend an accused official or declare him ineligible for public service for up to ten years, or to remove him from office without prejudice to any other responsibility.

During these proceedings, the accused official has the right to defend himself or to be assisted by counsel before the Permanent Assembly and Congress as a whole.

In cases of a criminal indictment, the Prosecutor General files criminal charges with the Supreme Court within five days. The Justice of the Supreme Court responsible for criminal affairs then initiates the criminal proceedings.

Acquittal by the Supreme Court restores political rights to the accused official.

The terms of the prosecutorial accusation and the order to start proceedings may not go beyond or below the terms of the Congress charges.

### **Article 101**

Congress shall elect the members of the Permanent Assembly. The membership shall be proportional to that of the representatives in each parliamentary group and shall not exceed twenty-five percent of the total number of congressmen.

It is the duty of the Permanent Assembly:

1. To appoint the Comptroller General upon recommendation from the President of the Republic.
2. To ratify the appointments of the President of the Central Reserve Bank and the Superintendent of Banking, Insurance, and Private Pension Fund Management Firms.  
\*  
2. To ratify the appointments of the President of the Central Reserve Bank and the Superintendent of Banking and Insurance.
3. To approve the supplemental credits, budget transfers, and supplemental allotments during the parliamentary recess.

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\* Subparagraph amended by Law No. 28484, published on April 5th, 2005. Before the amendment, this subparagraph stated:

2. To ratify the appointments of the President of the Central Reserve Bank and the Superintendent of Banking and Insurance.

4. To exercise the delegation of legislative powers conferred by Congress.

Matters relating to constitutional reform, approval of international treaties, organic acts, the Budget Act, and the General Account of the Republic Act may not be delegated to the Permanent Assembly.

5. To perform other responsibilities as set forth in the Constitution and the Standing Rules of Congress.

## **Article 102**

It is the duty of the Congress:

1. To pass laws and legislative resolutions, as well as to interpret, amend, or repeal existing laws.
2. To ensure respect for the Constitution and the laws; and to do whatever is necessary to hold violators responsible.
3. To conclude treaties, in accordance with the Constitution.
4. To pass the Budget and the General Account.
5. To authorize loans, in accordance with the Constitution.
6. To exercise the right to amnesty.
7. To approve the territorial demarcation proposed by the Executive Branch.
8. To consent to the entry of foreign troops into the territory, whenever it does not affect, in any manner, national sovereignty.
9. To authorize the President of the Republic to leave the country.
10. To perform any other duties as provided in the Constitution and those inherent in the legislative function.

## **CHAPTER II**

### **THE LEGISLATIVE FUNCTION**

## **Article 103**

Special laws may be passed because they are required by the nature of things, but not because of differences between persons. After its entry into force, the law is applied to the consequences of existing legal relations and situations, and it does not have retroactive force or effect, except, in both cases, in criminal matters when such application favors the

defendant. A law is repealed only by another law. A law is null by declaration of unconstitutionality.

The Constitution does not endorse the abuse-of-rights doctrine.\*

### **Article 104**

Congress may delegate the power to legislate to the Executive Branch through legislative decrees on specific matters and in the term established by the authorizing law.

Congress may not delegate those non delegable matters to the Permanent Assembly.

As to their promulgation, publication, enforcement, and effects, legislative decrees are subject to the same rules governing the law.

The President of the Republic reports to the Congress or the Permanent Assembly on each legislative decree.

### **Article 105**

No bill shall be passed without previous approval of the competent ruling committee, except as provided in the Standing Rules of Congress. Bills sent by the Executive Branch of an urgent nature shall have priority in Congress.

### **Article 106**

Organic acts govern the structure and operation of State bodies as defined in the Constitution, as well as other matters whose regulation by such acts is established in the Constitution.

Bills of organic acts are processed like any other law. In order to pass or amend them, the vote of more than half of the legal number of members of Congress is required.

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\* Article replaced by Law No. 28389, published on November 17th, 2004. Before the amendment, this article stated:

Special laws may be passed because they are required by the nature of things, but not because of differences between persons.

No law has retroactive force or effect, except in criminal matters when such application favors the defendant.

A law is repealed only by another law. A law is null by declaration of unconstitutionality.

The Constitution does not endorse the abuse-of-rights doctrine.

## **CHAPTER III LAWMAKING AND ENACTMENT**

### **Article 107**

Both the President of the Republic and the congressmen have the right to initiative in lawmaking.

The same right, in matters within their competence, is also enjoyed by the other State branches, autonomous public agencies, regional and local governments, and professional associations. Likewise, citizens possess the right to initiative in accordance with the law.\*

### **Article 108**

As provided in the Constitution, the passed law is referred to the President of the Republic for enactment within fifteen days. If the President of the Republic fails to enact the law, the President of Congress or the President of the Permanent Assembly is responsible for its enactment, as appropriate.

If the President of the Republic has observations to share regarding the whole or any part of the law passed by the Congress, he shall submit them to the Legislature within fifteen days.

Once the law has been reconsidered by Congress, its President enacts the law with the vote of more than half the legal number of congressmen.

### **Article 109**

The law comes into force the day following its publication in the official gazette, unless a provision of the same law delays its effect in whole or in part.

## **CHAPTER IV THE EXECUTIVE BRANCH**

### **Article 110**

The President of the Republic is the Head of the State and personifies the Nation.

To be elected President of the Republic, one must be Peruvian by birth, have attained the age of thirty-five years at the time of candidacy, and enjoy the right to vote.

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\* Article amended by Law No. 28390, published on November 17th, 2004. Before the amendment, this article stated:

*Both the President of the Republic and the congressmen have the right to initiative in lawmaking.*

*The same right, in matters within their competencies, is also enjoyed by the other State branches, autonomous public agencies, municipalities, and professional associations. Likewise, citizens possess the right to initiative in accordance with the law.*

## **Article 111**

The President of the Republic is elected by direct suffrage. The candidate who obtains more than half the votes is elected. Invalid or blank votes are not counted.

If no candidate receives an absolute majority, a run-off election is held within thirty days following the proclamation of the official results between the two candidates with the highest relative majorities.

Two Vice Presidents are elected together with the President, in the same manner and under the same requirements and terms.

## **Article 112**

The presidential term of office lasts five years. There is no immediate reelection. A former president may run again following at least one constitutional term, subject to the same conditions.<sup>\*</sup>

## **Article 113**

The President of the Republic may vacate his office for the following reasons:

1. Death of the President of the Republic.
2. His permanent physical or moral incapacity declared by Congress.
3. Acceptance of his resignation by Congress.
4. His departure from the national territory without permission from Congress or his failure to return within the agreed time.
5. His removal from office after having been penalized for any of the violations mentioned in article 117 of the Constitution.

## **Article 114**

The office of President of the Republic is suspended in the event of:

1. Temporary incapacity of the President declared by Congress.
2. His subjection to judicial proceedings pursuant to article 117 of the Constitution.

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<sup>\*</sup> Article amended by Law No. 27365, published on November 5th, 2000. Before the amendment, this article stated:

*The presidential term of office lasts five years. The President may be reelected immediately for an additional term. A former president may run again following at least one constitutional term, subject to the same conditions.*

## **Article 115**

In the event of temporary or permanent incapacity of the President of the Republic, the first Vice President shall assume the duties thereof, or, in his absence, the second Vice President, or, in the event of incapacity of both, the President of Congress. Whenever the incapacity is permanent, the President of Congress may immediately call an election.

When the President leaves the national territory, the first Vice President is charged with his office, or, in his absence, the second Vice President.

## **Article 116**

The President of the Republic shall take an oath prescribed by law and assume office before the Congress on July 28th of the year in which the election is held.

## **Article 117**

During his term of office, the President of the Republic may only be charged with: committing high treason; preventing presidential, congressional, regional, or municipal elections; dissolving Congress, except in cases as set forth in article 134 of the Constitution; and preventing the meeting or operation of Congress, the National Election Board, or other bodies of the election system.

## **Article 118**

It is the duty of the President of the Republic:

1. To observe and enforce the Constitution and treaties, laws, and other legal provisions.
2. To represent the State inside and outside of the Republic.
3. To manage the general policy of the government.
4. To ensure the domestic order and external security of the Nation.
5. To call elections for president of the Republic and congressmen, as well as mayors, council members, and other officials, as set forth by law.
6. To convene Congress in special session; and, in that event, to sign the convention decree.
7. To deliver messages to Congress at any time and compulsorily, either in person or in writing, at the commencement of the first regular session. Annual messages shall include detailed reports on the state of the Nation, and improvements and reforms the President deems necessary and relevant for consideration by the Congress. Except in the first instance, the messages of the President are approved by the Cabinet.

8. To exercise the power of regulating laws without violating or distorting them and, within these limits, to issue decrees and resolutions.
9. To observe and enforce the judgments and orders of jurisdictional bodies.
10. To observe and enforce the resolutions of the National Election Board.
11. To manage foreign policy and international affairs, and to formalize and ratify treaties.
12. To appoint ambassadors and plenipotentiaries, upon approval by the Cabinet and with the duty to inform Congress.
13. To welcome foreign diplomatic agents and authorize consuls to perform their duties.
14. To preside over the National Defense System and organize, allot, and order the mobilization of the Armed Forces and National Police.
15. To take the necessary measures to ensure the defense of the Republic, the integrity of the territory, and the sovereignty of the State.
16. To declare war and sign peace treaties with the authorization of Congress.
17. To manage the public treasury.
18. To negotiate loans.
19. To promulgate special measures in economic and financial spheres, through emergency decrees with force of law, as required by the national interest and with the duty to report to Congress. Such emergency decrees may be modified or repealed by Congress.
20. To regulate customs tariffs.
21. To grant pardons and commute sentences, and to exercise the grant of executive clemency to the accused, in cases where the stage of criminal proceedings has exceeded double the term plus extension.
22. To award decorations on behalf of the Nation with the agreement of the Cabinet.
23. To authorize Peruvians to serve in a foreign army.
24. To exercise the other duties of government and administration entrusted to him by the Constitution and law.

## **CHAPTER V THE CABINET**

### **Article 119**

The administration and management of public services are entrusted to the Cabinet and to each minister in the matters of his portfolio.

### **Article 120**

Acts of the President of the Republic without ministerial countersignature are null and void.

### **Article 121**

The collected ministers form the Cabinet. Its organization and duties are stipulated by law.

The Cabinet has its own President. The President of the Republic presides over the Cabinet when he convenes it or when he attends its meetings.

### **Article 122**

The President of the Republic appoints and removes the President of the Cabinet from office. He appoints and removes other ministers with the recommendation and consent respectively of the President of the Cabinet.

### **Article 123**

It is the duty of the President of the Cabinet, who may be a minister without portfolio:

1. To be, after the President of the Republic, the authorized spokesperson for the government.
2. To coordinate the duties of the other ministers.
3. To countersign legislative and emergency decrees, and any other decrees or resolutions as stated in the Constitution and the law.

### **Article 124**

To be a minister, one must be Peruvian by birth, exercise his rights to citizenship, and have attained twenty-five years of age. Members of the Armed Forces and the National Police may be ministers.

### **Article 125**

It is the duty of the Cabinet:

1. To approve the bills submitted to Congress by the President of the Republic.

2. To approve legislative and emergency decrees enacted by the President of the Republic, as well as bills, decrees, and resolutions as set forth by law.
3. To deliberate on matters of public interest.
4. To perform other duties as set forth in the Constitution and law.

### **Article 126**

Any agreement of the Cabinet requires the affirmative voting of the majority of its members and it is stated on record.

Ministers shall not hold any other public office, except legislative functions.

Ministers shall neither be a manager of their own interests or those of third parties, engage in profitable activities, nor may they be involved in the administration or management of private enterprises or associations.

### **Article 127**

There are no interim ministers. The President of the Republic may entrust a minister to assume the duties of another on grounds of incapacity while retaining his portfolio, but such responsibility may neither exceed thirty days nor be transferable to other ministers.

### **Article 128**

Ministers are individually responsible for their own acts and for the presidential acts they countersign.

All ministers are jointly liable for criminal and violating acts of the Constitution and for laws created by the President of the Republic or agreed to by the Cabinet, even when they dissent from the majority opinion, unless they immediately resign.

### **Article 129**

The Cabinet as a whole or the ministers separately may attend sessions of Congress and participate in its debates with the same prerogatives as members of Congress, except that of voting if they are not congressmen.

They also attend when they are invited for reporting. The President of the Cabinet or at least one of the ministers shall periodically attend the plenary sessions of Congress to respond to questions.

## **CHAPTER VI**

### **RELATIONS WITH THE LEGISLATIVE BRANCH**

#### **Article 130**

Within thirty days of having assumed his functions, the President of the Cabinet and the other ministers shall attend Congress to present and discuss the general policy of the government and the main measures required for its implementation, asking for a vote of confidence.

If Congress is not convened, the President of the Republic calls a special session.

#### **Article 131**

Attendance is compulsory for the Cabinet or any of the ministers whenever Congress calls upon them for interpellation.

Interpellation is made in writing, and shall be submitted by at least fifteen percent of the legal number of congressmen. For its introduction, at least a third of the number of qualified congressmen is required. A vote must be taken at the following session.

Congress determines the date and time for ministers to respond to interpellation. This may not occur or be voted upon before the third or after the tenth day following its submission.

#### **Article 132**

Congress makes effective the political liability of the Cabinet or of each minister individually, through a vote of no confidence or by defeating a vote of confidence. The latter may only be proposed by ministerial initiative.

Any motion of no confidence against the Cabinet or any minister shall be introduced by at least twenty-five percent of the legal number of congressmen. It is subject to debate and a vote between the fourth and tenth calendar day following its introduction. Its approval requires the vote of over half the legal number of congressmen.

A censured Cabinet or minister must resign.

The President of the Republic shall accept the resignation within the subsequent seventy-two hours.

Defeat of a ministerial initiative does not force the minister to resign, unless its approval was made a vote of confidence.

#### **Article 133**

The President of Cabinet may introduce before Congress a vote of confidence on behalf of the Cabinet. A total cabinet crisis occurs if the confidence is rejected or the President of Cabinet is censured, or if he resigns or is removed by the President of the Republic.

## **Article 134**

The President of the Republic has the power to dissolve Congress if it has censured or denied its confidence to two Cabinets.

The dissolution decree shall contain a call for the election of a new Congress. Such elections shall be held within four months of the dissolution of Congress, without any alteration of the existing electoral system.

Congress may not be dissolved during the last year of its term. Once Congress is dissolved, the Permanent Assembly, which may not be dissolved, continues exercising its functions.

There is no other form to revoke parliamentary mandate.

Under a state of siege, Congress may not be dissolved.

## **Article 135**

When the new Congress convenes, it may censure the Cabinet, or deny it a vote of confidence once the President of the Cabinet has explained the acts of the Executive Branch before Congress during the parliamentary interregnum.

During the interregnum, the Executive Branch legislates through emergency decrees, which it submits to the Permanent Assembly for examination and eventual submission to Congress once it reconvenes.

## **Article 136**

If elections are not held within the stated term, the dissolved Congress convenes by law, regains its powers, and removes the Cabinet from office. None of its members may be reappointed minister for the rest of the presidential term.

A Congress elected in this manner replaces the previous one, including the Permanent Assembly, and finishes the constitutional term of the dissolved Congress.

# **CHAPTER VII**

## **STATE OF EXCEPTION**

## **Article 137**

The President of the Republic, with the consent of the Cabinet, may decree for a determined time period in all or part of the national territory, and with a duty to report to Congress or Permanent Assembly, a state of exception as provided for in this article:

1. A state of emergency, in case of disturbances of the peace or the domestic order, disasters, or serious circumstances affecting the life of the Nation. In this case, the exercise of constitutional right relating to personal freedom and security, the inviolability of the home, and freedom of assembly and movement

in the territory as set forth in paragraphs 9, 11, and 12 of article 2 and in paragraph 24, subparagraph f of the same article, may be restricted or suspended. Under no circumstances shall anyone be exiled.

The state of emergency period shall not exceed sixty days. Its extension requires a new decree. Under a state of emergency, the Armed Forces may assume control over domestic order if the President of the Republic so decides.

2. A state of siege, in case of invasion, foreign or civil war, or imminent danger that such events might occur, with mention to those fundamental rights whose exercise is not restricted or suspended. The applicable period shall not exceed forty-five days. When the state of siege is declared, Congress convenes by law. Its extension requires congressional approval.

## **CHAPTER VIII THE JUDICIAL BRANCH**

### **Article 138**

The power of administering justice emanates from the people. The Judicial Branch exercises it through its hierarchical entities in accordance with the Constitution and laws.

In all proceedings, when an incompatibility exists between a constitutional and a legal rule, judges shall decide based on the former. Likewise, they shall choose a legal rule over any other rule of lower rank.

### **Article 139**

Principles and rights of the jurisdictional function are the following:

1. The unity and exclusivity of the jurisdictional function.

No independent jurisdiction exists, nor shall it be established, except regarding the military and arbitration.

There are no judicial proceedings by commission or delegation.

2. The independence in the exercise of the jurisdictional function.

No authority shall remove cases pending before a jurisdictional body or interfere in the exercise of its functions. Neither shall they invalidate orders under *res judicata*, halt proceedings underway, nor modify sentences or delay their execution. These provisions do not affect grants of executive clemency or the authority of congressional investigations, the exercise of which may nevertheless not interfere in the jurisdictional proceedings or have any jurisdictional effect.

3. The observance of due process and jurisdictional protection.

No person shall be diverted from the jurisdiction predetermined by the law, nor shall anyone be subjected to proceedings other than those previously established, or be tried by exceptional jurisdictional bodies or special commissions created for that purpose, whatever the official title.

4. The publicity of proceedings, unless otherwise provided by law.

Judicial proceedings involving the liabilities of public officials, crimes committed through the press, and those relating to fundamental rights guaranteed by the Constitution are always public.

5. The written explanation of court orders at all levels, except merely procedural decrees, with express mention of the applicable law and the factual grounds on which they are based.

6. The plurality of the jurisdictional level.

7. Compensation, in the manner prescribed by law, for miscarriages of justice in criminal trials and arbitrary arrests, with prejudice to any liability that may be determined.

8. The principle of never failing to administrate justice, despite loopholes or deficiencies in the law.

In such cases, the general principles of law and customary law must be applied.

9. The principle of inapplicability through analogy of the criminal law and laws restricting rights.

10. The principle that no one shall be punished without judicial proceedings.

11. The most favorable application of the law to the defendant in cases of doubt or conflict between criminal laws.

12. The principle that no person shall be convicted *in absentia*.

13. The prohibition of reopening closed cases with a final order of conviction. Amnesty, pardons, stays of execution, and prescription produce the effects of *res judicata*.

14. The principle that no person shall be deprived of the right to defense at any stage of the proceedings.

Every person shall be notified immediately and in writing of the causes or reasons for his detention. In addition, he has the right to communicate in person with and be advised by the legal counsel of his choice upon being summoned or arrested by any authority.

15. The principle that every person must be informed immediately and in writing of the causes or reasons for his arrest.
16. The principle of free administration of justice and a free defense for persons of limited means, as well as for everyone in those cases stipulated by law.
17. The participation of the people in the appointment and removal of judges, in accordance with the law.
18. The obligation of the Executive Branch to collaborate in trials, when required.
19. The prohibition of the exercise of the judicial function by anyone who has not been appointed in the manner prescribed by the Constitution or the law.

Jurisdictional bodies may not confer such an office, under penalty of liability.

20. The principle that every person has the right to make analyses and criticisms of court orders and sentences, within the limits of law.
21. The right of inmates and convicted individuals to be provided suitable facilities.
22. The principle that the purpose of the criminal justice system is the reeducation, rehabilitation, and reintegration of the guilty into society.

## **Article 140**

The death penalty shall only be applied for the crimes of treason in wartime and terrorism, in accordance with the laws and the treaties to which Peru is bound.

## **Article 141**

The Supreme Court may decide on judicial rulings as the court of last resort, when the action is filed with a Superior Court or before the Supreme Court itself, as provided by law. It also hears annulment appeals for decisions of the Military Court, within the limits set forth in article 173.

## **Article 142**

Decisions of the National Election Board concerning election matters are not subject to review, nor those of the National Council of the Magistracy regarding evaluation and ratification of judges.

## **Article 143**

The Judicial Branch consists of jurisdictional bodies, which administer justice on behalf of the Nation, and bodies that exercise their government and administration.

The jurisdictional bodies are the following: the Supreme Court of Justice and the other courts and tribunals as determined by their organic acts.

## **Article 144**

The Chief Justice of the Supreme Court is also the head of the Judicial Branch. The plenary session of the Supreme Court is the highest deliberation body of the Judicial Branch.

## **Article 145**

The Judicial Branch submits its budget draft to the Executive Branch and sustains it before Congress.

## **Article 146**

Judicial office is incompatible with any other public or private activity, except university teaching outside the working hours.

Judges receive only the compensation assigned in the Budget and revenues earned from teaching or other functions expressly prescribed by law.

The State guarantees judges:

1. Their independence. They are subject only to the Constitution and the law.
2. The irremovability of their office. They shall not be transferred without their consent.
3. Their continuance in office, as long as they show proper conduct and qualification for their function.
4. A compensation ensuring them a standard of living befitting their office and rank.

## **Article 147**

To be Justice of the Supreme Court, one is required:

1. To be Peruvian by birth.
2. To exercise his citizenship.
3. To be at least forty-five years of age.

4. To have held the office of Justice of the Superior Court or Superior Prosecutor for ten years, or to have practiced the law or taught a legal discipline at the university level for fifteen years.

### **Article 148**

Administrative resolutions under *res judicata* are susceptible to challenge through administrative action.

### **Article 149**

Authorities of rural and native communities, in conjunction with the peasant patrols, may exercise jurisdictional functions at the territorial level in accordance with common law, provided they do not violate the fundamental rights of the individual. The law provides forms for coordination of such jurisdiction with Justices of the Peace and other bodies of the Judicial Branch.

## **CHAPTER IX** **THE NATIONAL COUNCIL OF THE MAGISTRACY**

### **Article 150**

The National Council of the Magistracy is responsible for the selection and appointment of judges and prosecutors, except those chosen through popular election.

The National Council of the Magistracy is independent and is governed by its organic act.

### **Article 151**

The Academy of the Magistracy, which is part of the Judicial Branch, is responsible for the education and training of judges and prosecutors at all levels for the purposes of qualification.

Completion of the special studies required by the Academy is necessary for promotion.

### **Article 152**

Justices of the Peace are chosen by popular election.

The election, its requirements, jurisdictional implementation, training, and duration of office are governed by law.

The law may establish the election of trial judges and determine the relevant mechanisms.

### **Article 153**

Judges and prosecutors are prohibited to participate in politics, unionize, or declare themselves on strike.

## **Article 154**

The duties of the National Council of the Magistracy are the following:

1. To appoint, following merits-based recruitment and personal evaluation, judges and prosecutors at all levels. Such appointments require the vote of two-thirds of the legal number of its members.
2. To ratify judges and prosecutors at all levels every seven years. Those not confirmed may not be readmitted to the Judicial Branch, or the Office of the Prosecutor General. The confirmation process is independent of the disciplinary measures.
3. To apply the penalty of removal to Justices of the Supreme Court and Supreme Prosecutors, and, at the request of the Supreme Court or the Board of Supreme Prosecutors, respectively, judges and prosecutors of all instances. The final and detailed order, following a hearing with the party in question, is not contestable.
4. To award judges and prosecutors the official title accrediting their status.

## **Article 155**

The members of the National Council of the Magistracy, in accordance with the relevant law, are the following:

1. One elected by the Supreme Court in plenary session by secret ballot.
2. One elected by the Board of Supreme Prosecutors by secret ballot.
3. One elected by the members of the National Bar Associations by secret ballot.
4. Two elected by the members of the other professional associations of the country by secret ballot, and in accordance with the law.
5. One elected by the rectors of national universities by secret ballot.
6. One elected by the rectors of private universities by secret ballot.

The membership of the National Council of the Magistracy may be expanded by its own decision to as many as nine members, with two additional members elected by the Council by secret ballot from individual lists presented by institutions representing labor and corporate sectors.

Regular members of the National Council of the Magistracy are elected, together with their substitutes, for five-year terms.

## **Article 156**

Requirements to become a member of the National Council of the Magistracy are the same as those for the Justices of the Supreme Court, except as provided in paragraph 4 of article 147. A member of the National Council of the Magistracy enjoys the same benefits and rights as a Justice of the Supreme Court and is subject to the same obligations and incompatibilities.

## **Article 157**

The members of the National Council of the Magistracy may be removed from office by a decision of Congress due to gross misconduct, with the affirmative vote of two-thirds of the legal number of congressmen.

# **CHAPTER X**

## **THE OFFICE OF THE PROSECUTOR GENERAL**

## **Article 158**

The Office of the Prosecutor General is autonomous. It is headed by the Prosecutor General of the Nation, who is elected by the Board of Supreme Prosecutors. The term of office for the Prosecutor General of the Nation is three years and it may be extended for another two years if reelected. Members of the Office of the Prosecutor General enjoy the same rights and prerogatives, and are subject to the same duties and legal incompatibilities, as their counterparts in the Judicial Branch. Likewise, their appointments are subject to the same requirements and procedures as those of members of the Judicial Branch within their respective categories.

## **Article 159**

It is the duty of the Office of the Prosecutor General:

1. To bring a lawsuit, *ex officio* or by private complaint, in defense of the legal order or public interests protected by law.
2. To watch over the independence of jurisdictional bodies, and the fair administration of justice.
3. To represent society in legal proceedings.
4. To conduct criminal investigations from their initiation. To that purpose, the National Police is obliged to enforce the orders of the Office of the Prosecutor General within the scope of its authority.
5. To institute criminal proceedings *ex officio* or by private action.
6. To give an opinion prior to judicial orders in cases set forth in the law.

7. To exercise legislative initiative in lawmaking, and inform Congress or the President of the Republic about legal loopholes and errors.

### **Article 160**

The Budget draft of the Office of the Prosecutor General is approved by the Board of Supreme Prosecutors, and submitted to the Executive Branch. It is sustained before the Executive Branch and before Congress.

## **CHAPTER XI THE OFFICE OF THE OMBUDSMAN**

### **Article 161**

The Office of the Ombudsman is autonomous. State bodies are obliged to cooperate with the Office of the Ombudsman whenever it requests their help.

The structure of the Office of the Ombudsman at the national level is set up by law.

The Ombudsman is elected and removed from office by the Congress with the votes of two-thirds of the legal number of members, and enjoys the same immunity and prerogatives as congressmen.

To be elected Ombudsman, a candidate must be at least thirty-five years of age and an attorney-at-law. The term of the office lasts five years and does not receive a binding mandate. He possesses the same incompatibilities as the Justices of the Supreme Court.

### **Article 162**

It is the duty of the Office of the Ombudsman to defend the constitutional and fundamental rights of the person and the community, and to ensure the enforcement of the state administration duties, as well as the provision of public services to citizens. The Ombudsman submits a report to Congress once a year and whenever the latter requests one. He may initiate legislation and recommend measures to facilitate the improved performance of his duties.

The Office of the Ombudsman submits its budget draft to the Executive Branch, which must be sustained before the Executive Branch and before Congress.

## **CHAPTER XII SECURITY AND NATIONAL DEFENSE**

### **Article 163**

The State guarantees the security of the Nation by means of the National Defense System.

The national defense is comprehensive and permanent. It is developed internally and externally. Every person and corporate entity is obliged to participate in the national defense, in accordance with the law.

#### **Article 164**

The direction, preparation, and exercise of the national defense are performed through a system, whose organization and functions are determined by law. The President of the Republic is the head of the National Defense System.

For the purposes of national defense, the law determines the extent and procedures for mobilization.

#### **Article 165**

The Armed Forces consist of the Army, the Navy, and the Air Force. Their fundamental purpose is to guarantee the independence, sovereignty, and territorial integrity of the Republic. They assume control of internal order in the case outlined in article 137 of the Constitution.

#### **Article 166**

It is the primary duty of the National Police to guarantee, maintain, and restore internal order. They protect and aid individuals and the community. They ensure the enforcement of laws and the security of both public and private property. They prevent, investigate, and fight crime. They guard and control the national borders.

#### **Article 167**

The President of the Republic is the Commander-in-Chief of the Armed Forces and the National Police.

#### **Article 168**

Relevant acts and regulations establish the organization, functions, specialization, training, and use of the Armed Forces and the National Police, as well as their internal disciplinary regimes.

The Armed Forces organize their reserves and deploy them in accordance with the needs of the national defense, according to law.

#### **Article 169**

The Armed Forces and the National Police are not deliberative bodies. They are subordinate to constitutional power.

#### **Article 170**

The law allocates funds for the logistical requirements of the Armed Forces and the National Police. Such funds must be earmarked for institutional purposes, under the control of the authority set forth in the law.

### **Article 171**

The Armed Forces and the National Police take part in the economic and social development of the country, and in its civil defense, according to law.

### **Article 172**

The Executive Branch annually fixes the number of members of the Armed Forces and the National Police. Their resources are allotted in the Budget Act.

Promotions are granted in accordance with the law. The President of the Republic grants the promotions of generals and admirals in the Armed Forces, as well as generals in the National Police upon recommendation from the relevant institution.

### **Article 173**

In the case of on-duty crimes, members of the Armed Forces and the National Police are subject to their respective jurisdictions, and to the Code of Military Justice. The Code provisions do not apply to civilians, except in cases of treason and terrorism as determined by law. The cassation appeal referred to in article 141 only applies when the death penalty is imposed.

Those who violate the rules of Mandatory Military Service will also be subject to the Code of Military Justice.

### **Article 174**

Ranks and honors, salary, and retirement pensions for officers in the Armed Forces and the National Police are equivalent. The law determines the respective equivalences for career members of the military or police who lack the rank or position of an officer. In such cases, the cited rights may not be forfeited except by court rulings.

### **Article 175**

Only the Armed Forces and the National Police may possess and use weapons of war.

The weapons existing in the country, as well as those manufactured in or introduced into the country, become State property without any legal process or indemnification.

The manufacture of weapons of war by the private industry in those cases outlined by the law is exempted of this prohibition.

The law regulates the manufacture, trade, possession, and use by private parties of weapons other than those used for war.

## **CHAPTER XIII THE ELECTORAL SYSTEM**

### **Article 176**

The electoral system has the purpose of ensuring that elections express the free, authentic, and spontaneous will of citizens, and that the vote count mirrors the accurate and timely reflection of the will of voters expressed at the polls by direct suffrage.

The basic functions of the system are: planning, organizing, and holding elections, referendum or other popular vote, maintaining and guarding the consolidated register for identification of voters, and recording modifications to civil status.

### **Article 177**

The electoral system consists of the National Election Board, the National Office of Elections, and the National Identification and Civil Status Registry. They are autonomous and coordinate their work with each other, in accordance with their authorities.

### **Article 178**

It is the duty of the National Election Board:

1. To oversee the legality of suffrage and the conduct of elections, referendum, and other popular vote, as well as to prepare electoral rolls.
2. To maintain and oversee the register of political organizations.
3. To ensure the enforcement of rules on political organizations and other provisions concerning electoral matters.
4. To administer justice on electoral matters.
5. To declare the winners in elections and issue their credentials, as well as to announce the results of referendum or other popular vote.
6. To perform other functions provided for in the law.

In electoral matters, the National Election Board has the power to initiate legislation and to submit to the Executive Branch the Budget draft for the electoral system with separate entries for each body of the system. It sustains the draft before the Executive and then before Congress.

### **Article 179**

The highest authority of the National Election Board is vested in its Plenary Assembly, composed of five members:

1. One elected by secret ballot by the Supreme Court from among its retired or active justices. In the latter case, the elected member is granted leave. The representative of the Supreme Court presides over the National Election Board.
2. One elected by secret ballot by the Board of Supreme Prosecutors from among its retired or active members. In the latter case, the elected member is granted leave.
3. One elected by secret ballot by the Lima Bar Association from among its membership.
4. One elected by secret ballot by the deans of law schools of public universities from among their former deans.
5. One elected by secret ballot by the deans of law schools of private universities from among their former deans.

### **Article 180**

The members of the Plenary Assembly of the National Election Board shall not be under forty-five years of age or over seventy. They are elected for four-year terms and may be reelected. The law regulates the renewal of membership in alternating elections every two years.

The office is a full-time, remunerated post. It is incompatible with any other public office, except for part-time teaching.

Candidates to elective office shall neither be members of the Plenary Assembly of the Election Board, citizens holding national leadership posts in political organizations, nor those who have held such posts during the four years preceding their candidacy.

### **Article 181**

The Plenary Assembly of the National Election Board examines facts with discretionary judgment and resolves disputes based on the law and the general principles of law. On issues concerning elections, referendum, or other popular vote, its decisions are final, definitive, and non reversible. No appeal may be filed against them.

### **Article 182**

The Head of the National Office of Elections is appointed by the National Council of the Magistracy for a renewable four-year term, and may be removed from office by the same Council for gross misconduct. He is subject to the same incompatibilities as the members of the Plenary Assembly of the National Election Board.

His main functions are to organize elections, referendum, and other popular vote, including the preparation of the budget for his office and the design of the voting ballot. It is also his duty to distribute election forms and other materials needed for elections and to announce

the results. He provides continued information on the vote count from the time the tally begins at polling stations. He performs other duties, as set forth by law.

### **Article 183**

The Head of the National Identification and Civil Status Registry is appointed by the National Council of the Magistracy for a renewable four-year term, and may be removed from office by the Council for gross misconduct. He is subject to the same incompatibilities as the members of the Plenary Assembly of the National Election Board.

The National Identification and Civil Status Registry is in charge of the registration of births, marriages, divorces, deaths, and other acts modifying civil status. It issues the respective certificates, and prepares and updates the electoral roll. Likewise, it provides the National Election Board and the National Office of Elections with the information necessary to perform their duties. It maintains identification records of citizens and issues identification documents.

It performs other duties, as set forth by law.

### **Article 184**

The National Election Board declares the nullity of an election process, referendum or any other popular vote when the number of void or blank votes, jointly or separately, exceeds two-thirds of the number of votes cast. The law may fix different ratios for municipal elections.

### **Article 185**

In any kind of election, referendum or other type of popular vote, a tally shall be performed publicly and uninterrupted at polling stations. The results may solely be reviewed in case of material error or challenge, all of which is resolved according to law.

### **Article 186**

The National Office of Elections issues the instructions and provisions needed to maintain order and safeguard personal freedom during elections. The Armed Forces and the National Police must enforce these provisions.

### **Article 187**

In case of multi-party elections there is proportional representation, in accordance with the system provided for in the law.

The law shall contain special provisions to facilitate the voting of Peruvians living abroad.

## **CHAPTER XIV DECENTRALIZATION\***

### **Article 188**

Decentralization is a form of democratic organization and a mandatory, continued policy of the State, whose essential purpose is the comprehensive development of the country. The decentralization process is carried out in stages, in a progressive and orderly manner, following criteria that permit the proper distribution of jurisdictions and transfer of resources from the national government to local and regional governments.

The branches of government and autonomous state bodies, as well as the Budget of the Republic, are decentralized in accordance with the law.

### **Article 189**

The territory of the Republic is divided into regions, departments, provinces, and districts, in whose boundaries a government is exercised and organized at national, regional, and local levels in the terms defined by the Constitution and the law, preserving the integrity and unity of the State and the Nation.

The regional level of government consists of regions and departments. The local level of government consists of provinces, districts, and villages.

### **Article 190**

Regions are created on the basis of contiguous areas with historical, cultural, administrative, and economic relations, thus comprising sustainable geo-economic unities.

The regionalization process shall begin by electing governments in the current departments and the Constitutional Province of Callao. These are regional governments.

Two or more contiguous departments may become a region by conducting a referendum, in accordance with the law. Likewise, two or more contiguous provinces and districts may change their regional constituency by following the same procedure.

Additional authorities and faculties, as well as special incentives, given to these newly formed regions shall be determined by law.

While the integration process is underway, two or more regional governments may create coordination mechanisms between themselves. The relevant law will regulate these mechanisms.

### **Article 191**

Regional governments enjoy political, economic, and administrative autonomy on pertinent matters within their jurisdiction. They coordinate with municipalities without interfering with their functions and authorities.

The basic organic structure of these governments consists of the Regional Council as the regulatory and oversight body, the President as the executive organ, and the Regional Coordination Council formed of provincial mayors and representatives of civil society as a consultative body to coordinate with municipalities, with their functions and authorities set forth in the law.

The Regional Council shall have a minimum of seven (7) members and a maximum of twenty-five (25), with at least one (1) for each province, and the rest, in accordance with the law, determined by a criterion of electoral population.

The president, together with a vice president, is elected by means of direct suffrage for a period of four (4) years and may be reelected. The members of the Regional Council are elected likewise, and for the same term. The mandate of such authorities is, according to law, revocable but non-renounceable, except in the cases provided by the Constitution.

In order to run for the office of President of the Republic, Vice President, member of the National Parliament, or Mayor, the presidents of regional governments must resign their office six (6) months in advance of the respective election.

The law determines the minimum percentages to facilitate representation of women, rural and indigenous communities, and aboriginal peoples in regional councils. The same applies for municipal councils.\*

## **Article 192**

Regional governments promote regional development and economy; encourage investments, activities, and public services within their jurisdiction, in harmony with national and local development plans and policies.

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\* Article amended by Law No. 28607, published on October 4th, 2005. Before the amendment, this article stated:

*Regional governments enjoy political, economic, and administrative autonomy on pertinent matters within their jurisdiction. They coordinate with municipalities without interfering with their functions and authorities.*

*The basic organic structure of these governments consists of a Regional Council as the regulatory and supervisory body, the President as the executive organ, and the Regional Coordination Council formed of provincial mayors and representatives of civil society as a consultative body to coordinate with municipalities, with their functions and authorities set forth in the law.*

*The Regional Council will have a minimum of seven (7) members and a maximum of twenty-five (25), with at least one (1) for each province, and the rest, in accordance with the law, determined by on a criterion of electoral population.*

*The president, together with a vice president, is elected by means of direct suffrage for a period of four (4) years and may be reelected. The members of the Regional Council are elected likewise, and for the same term. The mandate of such authorities is revocable but non renounceable, according to law.*

*The law determines the minimum percentages to facilitate representation of women, rural and indigenous communities, and aboriginal peoples in regional councils. The same applies for municipal councils.*

It is their duty:

1. To approve their internal organization and budget.
2. To formulate and adopt a regional development plan, agreed to by the relevant municipalities and the civil society.
3. To administrate their property and revenue.
4. To regulate and issue permits, licenses, and authorizations on the services under their responsibility.
5. To promote regional socioeconomic development and execute the corresponding plans and programs.
6. To issue the rules concerning regional management.
7. To promote and regulate activities and/or services regarding agriculture, fishing, industry, agro-industry, trade, tourism, energy, mining, roads, communications, education, health, and the environment, according to law.
8. To encourage competitiveness, investments, and financing for the development of infrastructure projects and works at the regional level.
9. To initiate legislation on pertinent matters and issues within their jurisdiction.
10. To execute other functions inherent to their authority, according to law.

### **Article 193**

The property and revenue of regional governments are the following:

1. Their own chattels and real property.
2. Specific fund transfers provided for in the annual Budget Act.
3. Taxes created by law in their favor.
4. Economic benefits originated in privatizations, concessions, and services they offer, according to law.
5. Resources allotted from the Regional Compensation Fund with a redistributive character, according to law.
6. Resources resulting from natural resource royalties (*canon*).

7. Resources resulting from their financial operations, including those performed with a State guarantee, according to law.
8. Other resources provided for by law.

## **Article 194**

Provincial and district municipalities are bodies of local government. They enjoy political, economic, and administrative autonomy on the matters within their jurisdiction. Municipalities of villages are created pursuant to law.

The organic structure of local governments consists of the Municipal Council as the regulatory and oversight body and the Office of the Mayor as the executive organ, with their functions and powers as provided by law.

Mayors and council members are elected by direct suffrage for a period of four (4) years and may be reelected. Their mandate is revocable but non renounceable, according to law, except in cases provided by the Constitution.

In order to run for the office of President of the Republic, Vice President, member of the National Parliament or president of a regional government, Mayors must resign their office six (6) months in advance of the respective election.<sup>\*</sup>

## **Article 195**

Local governments stimulate development, the local economy, and the delivery of public services within their responsibility, in harmony with national and regional development plans and policies.

It is their duty:

1. To approve their internal organization and budget.
2. To adopt a local development plan, agreed to by the civil society.
3. To administrate their own property and revenue.

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<sup>\*</sup> Article amended by Law No. 28607, published on October 4th, 2005. Before the amendment, this article stated:

*Provincial and district municipalities are bodies of local government. They enjoy political, economic, and administrative autonomy on the matters within their jurisdiction. Municipalities of villages are created pursuant to law.*

*The organic structure of local governments consists of the Municipal Council as the regulatory and oversight body and the Office of the Mayor as the executive organ, with the functions and powers as set forth in the relevant law.*

*Mayors and council members are elected by direct suffrage for a period of four (4) years and may be reelected.*

*Their mandate is revocable but non renounceable, according to law.*

4. To create, amend, and abolish municipal taxes, rates, duties, licenses, and levies, in accordance with the law.
5. To organize, regulate, and manage local public services within their responsibility.
6. To plan rural and urban development of their circumscriptions, including zoning as well as city and site planning.
7. To encourage competitiveness, investments, and financing for the development of projects and works of local infrastructure.
8. To develop and regulate activities and/or services regarding education, health, housing, sanitation, environment, sustainability of natural resources, public transportation, circulation and traffic, tourism, preservation of archeological and historical monuments, culture, recreation, and sports, according to law.
9. To initiate legislation on pertinent matters and issues within their jurisdiction.
10. To execute other functions inherent to their authority, according to law.

## **Article 196**

The property and revenue of municipalities are the following:

1. Their own chattels and real property.
2. Taxes created by law in their favor.
3. Municipal taxes, rates, duties, licenses, and levies created by municipal ordinances, according to law.
4. Economic benefits originated in privatizations, concessions, and services they offer, according to law.
5. Resources allotted from the Municipal Compensation Fund with a redistributive nature, according to law.
6. Specific fund transfers provided for in the annual Budget Act.
7. Resources resulting from natural resource royalties (*canon*).
8. Resources resulting from their financial operations, including those performed with a State guarantee, according to law.
9. Other resources determined by law.

### **Article 197**

Municipalities promote, support, and regulate citizen participation in local development. Additionally, they offer citizen security services in cooperation with the National Police of Peru, according to law.

### **Article 198**

The Capital of the Republic does not belong to any region. It enjoys special treatment in decentralization laws and in the Municipalities Act. The Metropolitan Municipality of Lima exerts jurisdiction within the territory of the province of Lima.

Likewise, municipalities located on border zones receive special treatment in the Municipalities Act.

### **Article 199**

Local and regional governments are controlled by their own oversight bodies and by those other bodies set forth in the Constitution or any other statute. They are subject to control and supervision by the Office of the Comptroller General of the Republic, which executes a decentralized and continued oversight system. Such governments formulate their budgets with citizen participation, and are accountable for their annual execution, in accordance with the law.

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\* *Chapter amended by Law No. 27680, published on March 7th, 2002. Before the amendment, this chapter stated:*

## ***CHAPTER XIV*** ***DECENTRALIZATION, REGIONS, AND MUNICIPALITIES***

### **Article 188**

*Decentralization is a continued process whose aim is the comprehensive development of the country.*

### **Article 189**

*The territory of the Republic is divided into regions, departments, provinces, and districts, in whose borders there is a unitary government operating in a decentralized and deconcentrated manner.*

### **Article 190**

*The regions are formed by the initiative and mandate of the populations belonging to one or more contiguous departments. Adjoining provinces and districts can also integrate or change their circumscription.*

*In both cases, a referendum is the proper procedure to follow, in accordance with the law.*

**Article 191**

*Provincial and district municipalities, as well as delegated municipalities in accordance with the law, are local governments agencies. They enjoy political, economic, and administrative autonomy in the pertinent matters within their jurisdictions.*

*It is the duty of the municipal council to perform regulating and oversight functions; the Office of the Mayor performs the executive functions.*

*The Mayor and city council members are elected by direct suffrage for five-year terms and may be reelected. Their mandate is revocable but non renounceable. They enjoy the prerogatives set forth by the law.*

**Article 192**

*Municipalities have the duty:*

1. *To approve their internal organization and budget.*
2. *To administrate their own property and revenue.*
3. *To create, amend, and abolish municipal taxes, rates, duties, licenses, and levies.*
4. *To organize, regulate, and manage local public services within their responsibility.*
5. *To plan rural and urban development of their circumscriptions and to execute relevant plans and programs.*
6. *To take part in the management of activities and services inherent to the State, according to law.*
7. *To perform other functions, in accordance with the law.*

**Article 193**

*The property and revenue of municipalities include:*

1. *Their own property and income.*
2. *Taxes created by law in their favor.*
3. *Municipal taxes, rates, duties, licenses, and levies created by the Municipal Council.*
4. *Resources allotted by the Municipal Compensation Fund, created by law considering municipal taxes.*
5. *Budget transfers from the central government.*
6. *Resources allotted from natural resource royalties (canon).*
7. *Other resources determined by law.*

**Article 194**

*Municipalities may associate or make cooperative agreements among themselves to execute public works and services.*

**Article 195**

*The law regulates the cooperation between the National Police and municipalities regarding citizen security.*

**Article 196**

*The capital of the Republic, provincial capital cities with metropolitan status, and department capital cities in national border areas receive special treatment in the Municipalities Act.*

*The same special treatment applies to the Constitutional Province of Callao and provinces in national border areas.*

**Article 197**

*Regions enjoy political, economic, and administrative autonomy in the matters within their competencies.*

*Within their jurisdiction, they manage the coordination and execution of regional socioeconomic plans and programs, as well as the management of activities and services inherent to the State, according to law. The law establishes their property and revenue. Regions support local governments. They do not replace them, nor duplicate their action or jurisdiction.*

**Article 198**

*The organized structure of the regions and their specific functions are determined by the organic act.*

*The highest authorities of the region are the President and the Regional Coordination Council.*

*The President of the region is elected by direct suffrage for a five-year term and may be reelected. His mandate is revocable but non-renounceable. He enjoys the prerogatives set forth in the law.*

*The Regional Coordination Council consists of the number of members set forth in the law. Provincial mayors or their representatives are ex officio members of said Council.*

**Article 199**

*Regions and municipalities are accountable for the execution of their budgets to the Office of the Comptroller General of the Republic. They are overseen in accordance with the law.*

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## TITLE V CONSTITUTIONAL PROTECTIONS

### **Article 200**

The following are the constitutional guarantees:

1. The writ of *habeas corpus*, which operates in case of an act or omission by any authority, official, or person that violates or threatens individual freedom or related constitutional rights.
2. The writ of *amparo*, which operates in case of an act or omission by any authority, official, or person that violates or threatens the other rights recognized by the Constitution, with the exception of those mentioned in the following subparagraph. It does not take effect against legal rules or court orders from regular judicial proceedings.\*
3. The writ of *habeas data*, which operates in case of an act or omission by any authority, official, or person that violates or threatens the rights referred to in article 2, subparagraphs 5, and 6 of this Constitution.\*\*
4. The writ of unconstitutionality, which operates against rules with the status of a law: laws, legislative decrees, emergency decrees, treaties, standing rules of Congress, regional general regulations, and municipal ordinances that infringe upon the Constitution either in form or in substance.
5. Popular action, *acción popular*, which operates in case of infringement of the Constitution and the law, against regulations, administrative rules, and general resolutions and decrees, irrespective of the authority that issues these rules.
6. The writ of *mandamus*, which operates against any authority or official who refuses to abide by a legal rule or administrative act, without prejudice to any legal liabilities.

Organic acts regulate the exercise of these protections and the effect of the declaration of unconstitutionality or illegality of a rule or statute.

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\* *Subparagraph amended by Law No. 26470, published on June 12th, 1995. Before the amendment, this subparagraph stated:*

2. *The writ of amparo, which operates in case of an act or omission by any authority, official, or person that violates or threatens the other rights recognized by the Constitution. It does not take effect against legal rules or court orders from regular judicial proceedings.*

\*\* *Subparagraph amended by Law No. 26470, published on June 12th, 1995. Before the amendment, this subparagraph stated:*

3. *The writ of habeas data, which operates against the act or omission by authority, official or person that violates or threatens the rights referred to in article 2, paragraphs 5, 6, and 7 of this Constitution.*

The exercise of the writs of *habeas corpus* and *amparo* is not suspended during enforcement of the states of exception referred to in article 137 of the Constitution.

When petitions concerning these constitutional rights are filed with regard to restricted or suspended rights, the corresponding jurisdictional body examines the reasonability and proportionality of the restrictive act. The judge is not entitled to challenge the declaration of the state of emergency or siege.

### **Article 201**

The Constitutional Court is the controlling body of the Constitution. It is autonomous and independent. It consists of seven members who are elected for five-year terms.

In order to become a member of the Constitutional Court, one must fulfill the same requirements as the Justices of the Supreme Court. Members of the Constitutional Court enjoy the same immunity and prerogatives as congressmen. The same incompatibilities apply to them, and they may not be immediately reelected.

Members of the Constitutional Court are elected by Congress with the positive vote of two-thirds of the legal number of its members. Judges and prosecutors who have not resigned their offices a year in advance are not eligible to be Constitutional Court magistrates.

### **Article 202**

It is the duty of the Constitutional Court:

1. To hear, in original jurisdiction, the writ of unconstitutionality.
2. To hear, as a court of last resort, orders refusing petitions of *habeas corpus*, *amparo*, *habeas data*, and *mandamus*.
3. To hear disputes over jurisdiction or over powers assigned by the Constitution, in accordance with the law.

### **Article 203**

The following are entitled to bring a writ of unconstitutionality:

1. The President of the Republic.
2. The Prosecutor General.
3. The Ombudsman.
4. Twenty-five percent of the legal number of congressmen.
5. Five thousand citizens, whose signatures shall be verified by the National Election Board. If the statute under question is a municipal ordinance, it may be

challenged by one percent of citizens from the respective territorial division, provided that this percentage does not exceed the number of signatures cited above.

6. Regional presidents, with the advice and consent of the Regional Coordination Council or provincial mayors acting upon the consent of their councils, in matters within their jurisdiction.
7. Professional associations on matters within their fields.

### **Article 204**

The ruling of the Constitutional Court declaring the unconstitutionality of a piece of legislation is published in the official gazette. The law becomes ineffective on the day following such publication.

The ruling of the Court declaring a statute to be, wholly or in part, unconstitutional does not have retroactive effects.

### **Article 205**

Once all legal resorts provided for by national legislation have been used and denied, the party deeming itself injured in terms of the rights granted by the Constitution may appeal to international courts or bodies established by treaties or agreements to which Peru is bound.

## **TITLE VI CONSTITUTIONAL REFORM**

### **Article 206**

Any initiative of constitutional reform must be adopted by Congress through an absolute majority of the legal number of its members, and must be ratified by a referendum. The referendum may be exempted when the consent of Congress is obtained in two successive regular sessions, with a favorable vote of greater than two-thirds of the legal number of congressmen in each case.

A law concerning a constitutional reform shall not be objected to by the President of the Republic.

The right to initiate a constitutional reform corresponds to the President with the approval of the Cabinet, to congressmen, and to a number of citizens equivalent to three-tenths of a percent (0.3%) of the voting population, with their signatures being verified by the corresponding electoral authority.

## FINAL AND TRANSITORY PROVISIONS

### **FIRST**

The pension scheme set forth by Decree-law No. 20530 is officially declared closed. Therefore, as soon as this constitutional reform goes into effect:

1. New admissions or readmissions to the Decree-law No. 20530 pension scheme are prohibited.
2. Those workers who, while eligible to join that pension scheme, have not qualified to receive their corresponding pension will have to choose between the National Pension System and the Private System of Pension Fund Management Firms.

Due to reasons of social interest, the new pension rules set forth in the relevant law will apply immediately to workers and pensioners of pension schemes run by the State, as appropriate. The adjustment between pension and salary levels is prohibited, as well as the reduction of the amount of pensions smaller than one taxation unit.

The relevant law will provide for a progressive application of limits to pensions exceeding one taxation unit.

The budget savings stemming from the application of new pension rules will be used to increase the lowest pensions, in accordance with the law.

The modifications introduced to current pension schemes, as well as the new pension schemes to be established in the future, shall have to abide by the financial sustainability and non adjustment criteria.

The national government, through its relevant agency, shall institute legal proceedings aimed to obtain the judicial declaration of nullity for those illegally obtained pensions, except those protected by *res judicata* sentences that have expressly determined the merits of a case or those whose actions have expired.\*

### **SECOND**

The State guarantees the timely pay and periodic adjustment of pensions under its administration, in accordance with the budget provisions made for such purposes and the possibilities of the national economy.

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\* *First Final and Transitory Provision amended by Law No. 28389, published on November 17th, 2004.*

*Before the amendment, this provision stated:*

*The new mandatory social regimes to be established regarding pension schemes for new public workers will not affect rights legally obtained, particularly the pension schemes established by Decree-laws 19990 and 20530 and their amendments.*

### **THIRD**

As long as there continue to exist different systems of work between private and public sectors, in no event and for no reason shall the benefits acquired under the two systems be cumulative. Any actions or orders contradicting this provision are null and void.

### **FOURTH**

Rules concerning the rights and freedoms recognized by this Constitution are construed in accordance with the Universal Declaration of Human Rights and the international treaties and agreements regarding those rights that have been ratified by Peru.

### **FIFTH**

Municipal elections are alternated with general elections so that the former are held halfway through the presidential term, in accordance with the law. To that effect, the term of mayors and council members elected during the next two municipal elections will last three and four years respectively.

### **SIXTH**

The term of mayors and council members elected in the 1993 election and its supplementary elections ends on December 31st, 1995.

### **SEVENTH**

The first general election process after the Constitution takes effect shall be held using the single constituency system while the decentralization process continues.

### **EIGHTH**

The provisions of this Constitution so requiring are the subjects of constitutional development laws.

The following provisions have priority:

1. Decentralization rules and, among them, those facilitating the election of new authorities in 1995 at the latest.
2. Those rules concerning the mechanisms and process of gradually eliminating legal monopolies granted in concessions and licenses for public services.

### **NINTH**

The renewal of membership of the National Election Board, established according to this Constitution, begins with those elected by the Lima Bar Association and law schools of public universities.

### **TENTH**

The law provides for the manner in which offices, officials, and employees of the Civil Registry of local governments and those of the Election Registry, shall merge into the National Identification and Civil Status Registry.

## **ELEVENTH**

The provisions of this Constitution requiring new or increased public expenses are applied gradually.

## **TWELFTH**

The departmental political organization of the Republic includes the following departments: Amazonas, Ancash, Apurímac, Arequipa, Ayacucho, Cajamarca, Cusco, Huancavelica, Huánuco, Ica, Junín, La Libertad, Lambayeque, Lima, Loreto, Madre de Dios, Moquegua, Pasco, Piura, Puno, San Martín, Tacna, Tumbes, Ucayali, and the Constitutional Province of Callao.

## **THIRTEENTH**

While the regions remain unformed and until their presidents are elected according to this Constitution, the Executive Branch determines the jurisdiction of the Transitory Councils of Regional Administration, now in operation, pursuant to the area of each of the departments established in the country.

## **FOURTEENTH**

This Constitution, once adopted by the Democratic Constitutional Congress, takes effect in accordance with the result of the referendum regulated by constitutional law.

## **FIFTEENTH**

The provisions of this Constitution related to the number of congressmen, terms of legislative mandate, and the Permanent Assembly do not apply to the Democratic Constitutional Congress.

## **SIXTEENTH**

Once promulgated, this Constitution replaces the 1979 Constitution.

## **SPECIAL TRANSITORY PROVISIONS\***

### **FIRST**

The President and the Vice Presidents of the Republic elected in the 2000 general elections will terminate their mandates on July 28th, 2001. Congressmen elected in the same electoral process will terminate their representation on July 26th, 2001. As an exception, the terms of office set forth in articles 90 and 112 of this Constitution do not apply to them.

### **SECOND**

With respect to the election process to be held in 2001, the term provided in the first paragraph of article 91 of this Constitution will be four months.

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\* *First and Second special transitory provisions added by Law No. 27365, published on November 5th, 2000.*

**THIRD**

The National Election Board allocates four seats for the provinces of Lima, without affecting the existing national apportionment and the other six in accordance with the law.\*

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\* *Third special transitory provision added by Law No. 29402, published on September 8th, 2009.*

## **DECLARATION**

### **THE DEMOCRATIC CONSTITUTIONAL CONGRESS**

**HEREBY DECLARES** that Peru, a country in the Southern Hemisphere, connected to Antarctica by its projecting coastlines, as well as by ecological factors and historical background; and according to the rights and obligations it enjoys as a consultative party to the Antarctic Treaty, encourages the preservation of Antarctica as a zone of peace devoted to scientific research, and the enforcement of an international regime that, without impairing the legitimate rights of our Nation, promotes, in the benefit of all mankind, a rational and equitable development of Antarctic resources, and ensures the protection and preservation of the ecosystem of that continent.

## **TABLE OF CONTENTS**

### **TITLE I**

#### **THE PERSON AND THE SOCIETY**

Articles 1 – 42

#### **CHAPTER I**

##### FUNDAMENTAL RIGHTS OF THE PERSON

Articles 1 – 3

#### **CHAPTER II**

##### SOCIAL AND ECONOMIC RIGHTS

Articles 4 – 29

#### **CHAPTER III**

##### POLITICAL RIGHTS AND DUTIES

Articles 30 – 38

#### **CHAPTER IV**

##### PUBLIC SERVICE

Articles 39 – 42

### **TITLE II**

#### **THE STATE AND THE NATION**

Articles 43 – 57

#### **CHAPTER I**

##### THE STATE, THE NATION, AND THE TERRITORY

Articles 43 – 54

#### **CHAPTER II**

##### TREATIES

Articles 55 – 57

**TITLE III**  
**THE ECONOMIC SYSTEM**  
Articles 58 – 89

**CHAPTER I**  
GENERAL PRINCIPLES  
Articles 58 – 65

**CHAPTER II**  
THE ENVIRONMENT AND THE NATIONAL RESOURCES  
Articles 66 – 69

**CHAPTER III**  
PROPERTY  
Articles 70 – 73

**CHAPTER IV**  
TAX AND BUDGET REGIME  
Articles 74 – 82

**CHAPTER V**  
CURRENCY AND BANKING  
Articles 83 – 87

**CHAPTER VI**  
THE AGRICULTURAL REGIME  
AND RURAL AND NATIVE COMMUNITIES  
Articles 88 – 89

**TITLE IV**  
**THE STRUCTURE OF THE STATE**  
Articles 90 – 199

**CHAPTER I**  
THE LEGISLATIVE BRANCH  
Articles 90 – 102

**CHAPTER II**  
THE LEGISLATIVE FUNCTION  
Articles 103 – 106

**CHAPTER III**  
LAWMAKING AND ENACTMENT  
Articles 107 – 109

**CHAPTER IV**  
THE EXECUTIVE BRANCH  
Articles 110 – 118

**CHAPTER V**  
THE CABINET  
Articles 119 – 129

**CHAPTER VI**  
RELATIONS WITH THE LEGISLATIVE BRANCH  
Articles 130 – 136

**CHAPTER VII**  
STATE OF EXCEPTION  
Article 137

**CHAPTER VIII**  
THE JUDICIAL BRANCH  
Articles 138 – 149

**CHAPTER IX**  
THE NATIONAL COUNCIL OF THE MAGISTRACY  
Articles 150 – 157

**CHAPTER X**  
THE OFFICE OF THE PROSECUTOR GENERAL  
Articles 158 – 160

**CHAPTER XI**  
THE OFFICE OF THE OMBUDSMAN  
Articles 161 – 162

**CHAPTER XII**  
**SECURITY AND NATIONAL DEFENSE**  
Articles 163 –175

**CHAPTER XIII**  
**THE ELECTORAL SYSTEM**  
Articles 176 –187

**CHAPTER XIV**  
**DECENTRALIZATION**  
Articles 188 –199

**TITLE V**  
**CONSTITUTIONAL PROTECTIONS**  
Articles 200 –205

**TITLE VI**  
**CONSTITUTIONAL REFORM**  
Article 206

**FINAL AND TRANSITORY PROVISIONS**

**SPECIAL TRANSITORY PROVISIONS**

**APPENDIX**

**DECLARATION**

Georgetown University  
Edmund A. Walsh School of Foreign Service  
Center for Latin American Studies Program  
Political Database of the Americas

# República del Perú

# Republic of Peru Constitución Política del Perú

# 1993 con reformas hasta 2005 Political Constitution of Peru 1993 with reforms until 2005

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Última actualización / Last updated: July 17, 2011

## CONSTITUCIÓN POLÍTICA DEL PERÚ 1993

### Índice:

- Título I: De la Persona y de la Sociedad
  - [Capítulo I: Derechos Fundamentales de la Persona](#)
  - [Capítulo II: De los Derechos Sociales y Económicos](#)
  - [Capítulo III: De los Derechos Políticos y de los Deberes](#)
  - [Capítulo IV: De la Función Pública](#)
- Título II: Del Estado y la Nación
  - [Capítulo I: Del Estado, la Nación y el Territorio](#)
  - [Capítulo II: De los Tratados](#)
- Título III: Del Régimen Económico
  - [Capítulo I: Principios Generales](#)
  - [Capítulo II: Del Ambiente y los Recursos Naturales](#)
  - [Capítulo III: De la Propiedad](#)
  - [Capítulo IV: Del Régimen Tributario y Presupuestal](#)
  - [Capítulo V: De la Moneda y la Banca](#)
  - [Capítulo VI: Del Régimen Agrario y de las Comunidades Campesinas y Nativas](#)
- Título IV: De la Estructura del Estado
  - [Capítulo I: Poder Legislativo](#)
  - [Capítulo II: De la Función Legislativa](#)
  - [Capítulo III: De la Formación y Promulgación de Leyes](#)
  - [Capítulo IV: Poder Ejecutivo](#)
  - [Capítulo V: Del Consejo de Ministros](#)
  - [Capítulo VI: De las Relaciones con el Poder Legislativo](#)
  - [Capítulo VII: Régimen de Excepción](#)
  - [Capítulo VIII: Poder Judicial](#)
  - [Capítulo IX: Del Consejo Nacional de la Magistratura](#)
  - [Capítulo X: Del Ministerio Público](#)
  - [Capítulo XI: De la Defensoría del Pueblo](#)
  - [Capítulo XII: De la Seguridad y la Defensa Nacional](#)

- [Capítulo XIII: Del Sistema Electoral](#)
- [Capítulo XIV: De la Descentralización, las Regiones y las Municipalidades](#)
- [Título V: De las Garantías Constitucionales](#)
- [Título VI: De la Reforma de la Constitución](#)
- [Disposiciones Finales y Transitorias](#)

## CONSTITUCION POLÍTICA DEL PERÚ 1993

### **PREAMBULO**

El Congreso Constituyente Democrático, invocando a Dios Todopoderoso, obedeciendo el mandato del pueblo peruano y recordando el sacrificio de todas las generaciones que nos han precedido en nuestra Patria, ha resuelto dar la siguiente Constitución:

### **TITULO I DE LA PERSONA Y DE LA SOCIEDAD**

#### **CAPITULO I DERECHOS FUNDAMENTALES DE LA PERSONA**

##### **Artículo 1º**

La defensa de la persona humana y el respeto de su dignidad son el fin supremo de la sociedad y del Estado.

##### **Artículo 2º**

Toda persona tiene derecho:

1. A la vida, a su identidad, a su integridad moral, psíquica y física y a su libre desarrollo y bienestar. El concebido es sujeto de derecho en todo cuanto le favorece.
2. A la igualdad ante la ley. Nadie debe ser discriminado por motivo de origen, raza, sexo, idioma, religión, opinión, condición económica o de cualquiera otra índole.
3. A la libertad de conciencia y de religión, en forma individual o asociada. No hay persecución por razón de ideas o creencias. No hay delito de opinión. El ejercicio público de todas las confesiones es libre, siempre que no ofenda la moral ni altere el orden público.
4. A las libertades de información, opinión, expresión y difusión del pensamiento mediante la palabra oral o escrita o la imagen, por cualquier medio de comunicación social, sin previa autorización ni censura ni impedimento alguno, bajo las responsabilidades de ley.

Los delitos cometidos por medio del libro, la prensa y demás medios de comunicación social se tipifican en el Código Penal y se juzgan en el fuero común.

Es delito toda acción que suspende o clausura algún órgano de expresión o le impide circular libremente. Los derechos de informar y opinar comprenden los de fundar medios de comunicación

5. A solicitar sin expresión de causa la información que requiera y a recibirla de cualquier entidad pública, en el plazo legal, con el costo que suponga el pedido. Se exceptúan las informaciones que afectan la intimidad personal y las que expresamente se excluyan por ley o por razones de seguridad nacional.

El secreto bancario y la reserva tributaria pueden levantarse a pedido del Juez, del Fiscal de la Nación, o de una comisión investigadora del Congreso con arreglo a ley y siempre que se refieran al caso investigado.

6. A que los servicios informáticos, computarizados o no, públicos o privados, no suministren informaciones que afecten la intimidad personal y familiar.

7. Al honor y a la buena reputación, a la intimidad personal y familiar así como a la voz y a la imagen propias.

Toda persona afectada por afirmaciones inexactas o agraviada en cualquier medio de comunicación social tiene derecho a que éste se rectifique en forma gratuita, inmediata y proporcional, sin perjuicio de las responsabilidades de ley.

8. A la libertad de creación intelectual, artística, técnica y científica, así como a la propiedad sobre dichas creaciones y a su producto. El Estado propicia el acceso a la cultura y fomenta su desarrollo y difusión.

9. A la inviolabilidad del domicilio. Nadie puede ingresar en él ni efectuar investigaciones o registros sin autorización de la persona que lo habita o sin mandato judicial, salvo flagrante delito o muy grave peligro de su perpetración. Las excepciones por motivos de sanidad o de grave riesgo son reguladas por la ley.

10. Al secreto y a la inviolabilidad de sus comunicaciones y documentos privados.

Las comunicaciones, telecomunicaciones o sus instrumentos sólo pueden ser abiertos, incautados, interceptados o intervenidos por mandamiento motivado del Juez, con las garantías previstas en la ley. Se guarda secreto de los asuntos ajenos al hecho que motiva su examen.

Los documentos privados obtenidos con violación de este precepto no tienen efecto legal.

Los libros, comprobantes y documentos contables y administrativos están sujetos a inspección o fiscalización de la autoridad competente, de conformidad con la ley. Las acciones que al respecto se tomen no pueden incluir su sustracción o incautación, salvo por orden judicial.

11. A elegir su lugar de residencia, a transitar por el territorio nacional y a salir de él y entrar en él, salvo limitaciones por razones de sanidad o por mandato judicial o por aplicación de la ley de extranjería.

12. A reunirse pacíficamente sin armas. Las reuniones en locales privados o abiertos al público no requieren aviso previo. Las que se convocan en plazas y vías públicas exigen anuncio anticipado a la autoridad, la que puede prohibirlas solamente por motivos probados de seguridad o de sanidad públicas.

13. A asociarse y a constituir fundaciones y diversas formas de organización jurídica sin fines de lucro, sin autorización previa y con arreglo a ley. No pueden ser disueltas por resolución administrativa.

14. A contratar con fines lícitos, siempre que no se contravengan leyes de orden público.

15. A trabajar libremente, con sujeción a ley.

16. A la propiedad y a la herencia.

17. A participar, en forma individual o asociada, en la vida política, económica, social y cultural de la Nación. Los ciudadanos tienen, conforme a ley, los derechos de elección, de remoción o revocación de autoridades, de iniciativa legislativa y de referéndum.

18. A mantener reserva sobre sus convicciones políticas, filosóficas, religiosas o de cualquiera otra índole, así como a guardar el secreto profesional.

19. A su identidad étnica y cultural. El Estado reconoce y protege la pluralidad étnica y cultural de la Nación. Todo peruano tiene derecho a usar su propio idioma ante cualquier autoridad mediante un intérprete. Los extranjeros tienen este mismo derecho cuando son citados por cualquier autoridad.

20. A formular peticiones, individual o colectivamente, por escrito ante la autoridad competente, la que está obligada a dar al interesado una respuesta también por escrito dentro del plazo legal, bajo responsabilidad. Los miembros de las Fuerzas Armadas y de la Policía Nacional sólo pueden ejercer individualmente el derecho de petición.

21. A su nacionalidad. Nadie puede ser despojado de ella. Tampoco puede ser privado del derecho de obtener o de renovar su pasaporte dentro o fuera del territorio de la República.

22. A la paz, a la tranquilidad, al disfrute del tiempo libre y al descanso, así como a gozar de un ambiente equilibrado y adecuado al desarrollo de su vida.

23. A la legítima defensa.

24. A la libertad y a la seguridad personales. En consecuencia:

a. Nadie está obligado a hacer lo que la ley no manda, ni impedido de hacer lo que ella no prohíbe.

b. No se permite forma alguna de restricción de la libertad personal, salvo en los casos previstos por la ley. Están prohibidas la esclavitud, la servidumbre y la trata de seres humanos en cualquiera de sus formas.

c. No hay prisión por deudas. Este principio no limita el mandato judicial por incumplimiento de deberes alimentarios.

d. Nadie será procesado ni condenado por acto u omisión que al tiempo de cometerse no esté previamente calificado en la ley, de manera expresa e inequívoca, como infracción punible; ni sancionado con pena no prevista en la ley.

e. Toda persona es considerada inocente mientras no se haya declarado judicialmente su responsabilidad.

f. Nadie puede ser detenido sino por mandamiento escrito y motivado del Juez o por las autoridades policiales en caso de flagrante delito.

El detenido debe ser puesto a disposición del juzgado correspondiente, dentro de las veinticuatro horas o en el término de la distancia.

Estos plazos no se aplican a los casos de terrorismo, espionaje y tráfico ilícito de drogas. En tales casos, las autoridades policiales pueden efectuar la detención preventiva de los presuntos implicados por un término no mayor de quince días naturales. Deben dar cuenta al Ministerio Público y al Juez, quien puede asumir jurisdicción antes de vencido dicho término.

g. Nadie puede ser incomunicado sino en caso indispensable para el esclarecimiento de un delito, y en la forma y por el tiempo previstos por la ley. La autoridad está obligada bajo responsabilidad a señalar, sin dilación y por escrito, el lugar donde se halla la persona detenida.

h. Nadie debe ser víctima de violencia moral, psíquica o física, ni sometido a tortura o a tratos inhumanos o humillantes. Cualquiera puede pedir de inmediato el examen médico de la persona agraviada o de aquél la imposibilitada de recurrir por sí misma a la autoridad. Carecen de valor las declaraciones obtenidas por la violencia. Quien la emplea incurre en responsabilidad.

### **Artículo 3º**

La enumeración de los derechos establecidos en este capítulo no excluye los demás que la Constitución garantiza, ni otros de naturaleza análoga o que se fundan en la dignidad del hombre, o en los principios de soberanía del pueblo, del Estado democrático de derecho y de la forma republicana de gobierno.

## **CAPITULO II DE LOS DERECHOS SOCIALES Y ECONOMICOS**

### **Artículo 4º**

La comunidad y el Estado protegen especialmente al niño, al adolescente, a la madre y al anciano en situación de abandono. También protegen a la familia y promueven el matrimonio. Reconocen a estos últimos como institutos naturales y fundamentales de la sociedad.

La forma del matrimonio y las causas de separación y de disolución son reguladas por la ley.

### **Artículo 5º**

La unión estable de un varón y una mujer, libres de impedimento matrimonial, que forman un hogar de hecho, da lugar a una comunidad de bienes sujeta al régimen de la sociedad de gananciales en cuanto sea aplicable.

### **Artículo 6º**

La política nacional de población tiene como objetivo difundir y promover la paternidad y maternidad responsables. Reconoce el derecho de las familias y de las personas a decidir. En tal sentido, el Estado asegura los programas de educación y la información adecuados y el acceso a los medios, que no afecten la vida o la salud.

Es deber y derecho de los padres alimentar, educar y dar seguridad a sus hijos. Los hijos tienen el deber de respetar y asistir a sus padres.

Todos los hijos tienen iguales derechos y deberes. Está prohibida toda mención sobre el estado civil de los padres y sobre la naturaleza de la filiación en los registros civiles y en cualquier otro documento de identidad.

### **Artículo 7º**

Todos tienen derecho a la protección de su salud, la del medio familiar y la de la comunidad así como el deber de contribuir a su promoción y defensa. La persona incapacitada para velar por sí misma a causa de una

deficiencia física o mental tiene derecho al respeto de su dignidad y a un régimen legal de protección, atención, readaptación y seguridad.

#### **Artículo 8º**

El Estado combate y sanciona el tráfico ilícito de drogas. Asimismo, regula el uso de los tóxicos sociales.

#### **Artículo 9º**

El Estado determina la política nacional de salud. El Poder Ejecutivo norma y supervisa su aplicación. Es responsable de diseñarla y conducirla en forma plural y descentralizadora para facilitar a todos el acceso equitativo a los servicios de salud.

#### **Artículo 10º**

El Estado reconoce el derecho universal y progresivo de toda persona a la seguridad social, para su protección frente a las contingencias que precise la ley y para la elevación de su calidad de vida.

#### **Artículo 11º**

El Estado garantiza el libre acceso a prestaciones de salud y a pensiones, a través de entidades públicas, privadas o mixtas. Supervisa asimismo su eficaz funcionamiento.

La ley establece la entidad del Gobierno Nacional que administra los regímenes de pensiones a cargo del Estado.

*(\* Párrafo agregado por Ley N° 28.389 del 17 de noviembre de 2004)*

#### **Artículo 12º**

Los fondos y las reservas de la seguridad social son intangibles. Los recursos se aplican en la forma y bajo la responsabilidad que señala la ley.

#### **Artículo 13º**

La educación tiene como finalidad el desarrollo integral de la persona humana. El Estado reconoce y garantiza la libertad de enseñanza. Los padres de familia tienen el deber de educar a sus hijos y el derecho de escoger los centros de educación y de participar en el proceso educativo.

#### **Artículo 14º**

La educación promueve el conocimiento, el aprendizaje y la práctica de las humanidades, la ciencia, la técnica, las artes, la educación física y el deporte. Prepara para la vida y el trabajo y fomenta la solidaridad. Es deber del Estado promover el desarrollo científico y tecnológico del país.

La formación ética y cívica y la enseñanza de la Constitución y de los derechos humanos son obligatorias en todo el proceso educativo civil o militar. La educación religiosa se imparte con respeto a la libertad de las conciencias.

La enseñanza se imparte, en todos sus niveles, con sujeción a los principios constitucionales y a los fines de la correspondiente institución educativa.

Los medios de comunicación social deben colaborar con el Estado en la educación y en la formación moral y cultural.

#### **Artículo 15º**

El profesorado en la enseñanza oficial es carrera pública. La ley establece los requisitos para desempeñarse como director o profesor de un centro educativo, así como sus derechos y obligaciones. El Estado y la sociedad procuran su evaluación, capacitación, profesionalización y promoción permanentes.

El educando tiene derecho a una formación que respete su identidad, así como al buen trato psicológico y físico.

Toda persona, natural o jurídica, tiene el derecho de promover y conducir instituciones educativas y el de transferir la propiedad de éstas, conforme a ley.

## **Artículo 16º**

Tanto el sistema como el régimen educativo son descentralizados.

El Estado coordina la política educativa. Formula los lineamientos generales de los planes de estudios así como los requisitos mínimos de la organización de los centros educativos. Supervisa su cumplimiento y la calidad de la educación.

Es deber del Estado asegurar que nadie se vea impedido de recibir educación adecuada por razón de su situación económica o de limitaciones mentales o físicas.

Se da prioridad a la educación en la asignación de recursos ordinarios del Presupuesto de la República.

## **Artículo 17º**

La educación inicial, primaria y secundaria son obligatorias. En las instituciones del Estado, la educación es gratuita. En las universidades públicas el Estado garantiza el derecho a educarse gratuitamente a los alumnos que mantengan un rendimiento satisfactorio y no cuenten con los recursos económicos necesarios para cubrir los costos de educación.

Con el fin de garantizar la mayor pluralidad de la oferta educativa, y en favor de quienes no puedan sufragar su educación, la ley fija el modo de subvencionar la educación privada en cualquiera de sus modalidades, incluyendo la comunal y la cooperativa.

El Estado promueve la creación de centros de educación donde la población los requiera.

El Estado garantiza la erradicación del analfabetismo. Asimismo fomenta la educación bilingüe e intercultural, según las características de cada zona. Preserva las diversas manifestaciones culturales y lingüísticas del país. Promueve la integración nacional.

## **Artículo 18º**

La educación universitaria tiene como fines la formación profesional, la difusión cultural, la creación intelectual y artística y la investigación científica y tecnológica. El Estado garantiza la libertad de cátedra y rechaza la intolerancia.

Las universidades son promovidas por entidades privadas o públicas. La ley fija las condiciones para autorizar su funcionamiento.

La universidad es la comunidad de profesores, alumnos y graduados. Participan en ella los representantes de los promotores, de acuerdo a ley.

Cada universidad es autónoma en su régimen normativo, de gobierno, académico, administrativo y económico. Las universidades se rigen por sus propios estatutos en el marco de la Constitución y de las leyes.

## **Artículo 19º**

Las universidades, institutos superiores y demás centros educativos constituidos conforme a la legislación en la materia gozan de inafectación de todo impuesto directo e indirecto que afecte los bienes, actividades y servicios propios de su finalidad educativa y cultural. En materia de aranceles de importación, puede establecerse un régimen especial de afectación para determinados bienes.

Las donaciones y becas con fines educativos gozarán de exoneración y beneficios tributarios en la forma y dentro de los límites que fije la ley.

La ley establece los mecanismos de fiscalización a que se sujetan las mencionadas instituciones, así como los requisitos y condiciones que deben cumplir los centros culturales que por excepción puedan gozar de los mismos beneficios.

Para las instituciones educativas privadas que generen ingresos que por ley sean calificados como utilidades, puede establecerse la aplicación del impuesto a la renta.

## **Artículo 20º**

Los colegios profesionales son instituciones autónomas con personalidad de derecho público. La ley señala los casos en que la colegiación es obligatoria.

## **Artículo 21º**

Los yacimientos y restos arqueológicos, construcciones, monumentos, lugares, documentos bibliográficos y de archivo, objetos artísticos y testimonios de valor histórico, expresamente declarados bienes culturales, y provisionalmente los que se presumen como tales, son patrimonio cultural de la Nación, independientemente de su condición de propiedad privada o pública. Están protegidos por el Estado.

La ley garantiza la propiedad de dicho patrimonio.

Fomenta conforme a ley, la participación privada en la conservación, restauración, exhibición y difusión del mismo, así como su restitución al país cuando hubiere sido ilegalmente trasladado fuera del territorio nacional.

#### **Artículo 22º**

El trabajo es un deber y un derecho. Es base del bienestar social y un medio de realización de la persona.

#### **Artículo 23º**

El trabajo, en sus diversas modalidades, es objeto de atención prioritaria del Estado, el cual protege especialmente a la madre, al menor de edad y al impedido que trabajan.

El Estado promueve condiciones para el progreso social y económico, en especial mediante políticas de fomento del empleo productivo y de educación para el trabajo.

Ninguna relación laboral puede limitar el ejercicio de los derechos constitucionales, ni desconocer o rebajar la dignidad del trabajador.

Nadie está obligado a prestar trabajo sin retribución o sin su libre consentimiento.

#### **Artículo 24º**

El trabajador tiene derecho a una remuneración equitativa y suficiente, que procure, para él y su familia, el bienestar material y espiritual.

El pago de la remuneración y de los beneficios sociales del trabajador tiene prioridad sobre cualquiera otra obligación del empleador.

Las remuneraciones mínimas se regulan por el Estado con participación de las organizaciones representativas de los trabajadores y de los empleadores.

#### **Artículo 25º**

La jornada ordinaria de trabajo es de ocho horas diarias o cuarenta y ocho horas semanales, como máximo.

En caso de jornadas acumulativas o atípicas, el promedio de horas trabajadas en el período correspondiente no puede superar dicho máximo.

Los trabajadores tienen derecho a descanso semanal y anual remunerados. Su disfrute y su compensación se regulan por ley o por convenio.

#### **Artículo 26º**

En la relación laboral se respetan los siguientes principios:

1. Igualdad de oportunidades sin discriminación.
2. Carácter irrenunciable de los derechos reconocidos por la Constitución y la ley.
3. Interpretación favorable al trabajador en caso de duda insalvable sobre el sentido de una norma.

#### **Artículo 27º**

La ley otorga al trabajador adecuada protección contra el despido arbitrario.

#### **Artículo 28º**

El Estado reconoce los derechos de sindicación, negociación colectiva y huelga. Cautela su ejercicio democrático:

1. Garantiza la libertad sindical.
2. Fomenta la negociación colectiva y promueve formas de solución pacífica de los conflictos laborales.
3. Regula el derecho de huelga para que se ejerza en armonía con el interés social. Señala sus excepciones y

limitaciones.

### **Artículo 29º**

El Estado reconoce el derecho de los trabajadores a participar en las utilidades de la empresa y promueve otras formas de participación.

## **CAPITULO III DE LOS DERECHOS POLITICOS Y DE LOS DEBERES**

### **Artículo 30º**

Son ciudadanos los peruanos mayores de dieciocho años. Para el ejercicio de la ciudadanía se requiere la inscripción electoral.

### **Artículo 31º**

Los ciudadanos tienen derecho a participar en los asuntos públicos mediante referéndum; iniciativa legislativa; remoción o revocación de autoridades y demanda de rendición de cuentas. Tienen también el derecho de ser elegidos y de elegir libremente a sus representantes, de acuerdo con las condiciones y procedimientos determinados por ley orgánica.

Es derecho y deber de los vecinos participar en el gobierno municipal de su jurisdicción. La ley norma y promueve los mecanismos directos e indirectos de su participación.

Tienen derecho al voto los ciudadanos en goce de su capacidad civil. Para el ejercicio de este derecho se requiere estar inscrito en el registro correspondiente.

El voto es personal, igual, libre, secreto y obligatorio hasta los setenta años. Es facultativo después de esa edad.

La ley establece los mecanismos para garantizar la neutralidad estatal durante los procesos electorales y de participación ciudadana.

Es nulo y punible todo acto que prohíba o limite al ciudadano el ejercicio de sus derechos.

(\* Artículo modificado por Ley N° 28.480 del 30 de marzo de 2005)

### **Artículo 32º**

Pueden ser sometidas a referéndum:

- 1.La reforma total o parcial de la Constitución;
- 2.La aprobación de normas con rango de ley;
- 3.Las ordenanzas municipales; y
- 4.Las materias relativas al proceso de descentralización.

No pueden someterse a referéndum la supresión o la disminución de los derechos fundamentales de la persona, ni las normas de carácter tributario y presupuestal, ni los tratados internacionales en vigor.

### **Artículo 33º**

El ejercicio de la ciudadanía se suspende:

1. Por resolución judicial de interdicción.
2. Por sentencia con pena privativa de la libertad.
3. Por sentencia con inhabilitación de los derechos políticos.

### **Artículo 34º**

Los miembros de las Fuerzas Armadas y de la Policía Nacional tienen derecho al voto y a la participación ciudadana, regulados por ley. No pueden postular a cargos de elección popular, participar en actividades partidarias o manifestaciones ni realizar actos de proselitismo, mientras no hayan pasado a la situación de retiro, de acuerdo a ley.

(\* *Artículo modificado por Ley N° 28.480 del 30 de marzo de 2005*)

#### **Artículo 35º**

Los ciudadanos pueden ejercer sus derechos individualmente o a través de organizaciones políticas como partidos, movimientos o alianzas, conforme a ley. Tales organizaciones concurren a la formación y manifestación de la voluntad popular. Su inscripción en el registro correspondiente les concede personalidad jurídica.

La ley establece normas orientadas a asegurar el funcionamiento democrático de los partidos políticos, y la transparencia en cuanto al origen de sus recursos económicos y el acceso gratuito a los medios de comunicación social de propiedad del Estado en forma proporcional al último resultado electoral general.

#### **Artículo 36º**

El Estado reconoce el asilo político. Acepta la calificación del asilado que otorga el gobierno asilante. En caso de expulsión, no se entrega al asilado al país cuyo gobierno lo persigue.

#### **Artículo 37º**

La extradición sólo se concede por el Poder Ejecutivo previo informe de la Corte Suprema, en cumplimiento de la ley y de los tratados, y según el principio de reciprocidad.

No se concede extradición si se considera que ha sido solicitada con el fin de perseguir o castigar por motivo de religión, nacionalidad, opinión o raza.

Quedan excluidos de la extradición los perseguidos por delitos políticos o por hechos conexos con ellos. No se consideran tales el genocidio ni el magnicidio ni el terrorismo.

#### **Artículo 38º**

Todos los peruanos tienen el deber de honrar al Perú y de proteger los intereses nacionales, así como de respetar, cumplir y defender la Constitución y el ordenamiento jurídico de la Nación.

### **CAPITULO IV DE LA FUNCION PUBLICA**

#### **Artículo 39º**

Todos los funcionarios y trabajadores públicos están al servicio de la Nación. El Presidente de la República tiene la más alta jerarquía en el servicio a la Nación y, en ese orden, los representantes al Congreso, ministros de Estado, miembros del Tribunal Constitucional y del Consejo de la Magistratura, los magistrados supremos, el Fiscal de la Nación y el Defensor del Pueblo, en igual categoría; y los representantes de organismos descentralizados y alcaldes, de acuerdo a ley.

#### **Artículo 40º**

La ley regula el ingreso a la carrera administrativa, y los derechos, deberes y responsabilidades de los servidores públicos. No están comprendidos en dicha carrera los funcionarios que desempeñan cargos políticos o de confianza. Ningún funcionario o servidor público puede desempeñar más de un empleo o cargo público remunerado, con excepción de uno más por función docente.

No están comprendidos en la función pública los trabajadores de las empresas del Estado o de sociedades de economía mixta.

Es obligatoria la publicación periódica en el diario oficial de los ingresos que, por todo concepto, perciben los altos funcionarios, y otros servidores públicos que señala la ley, en razón de sus cargos.

### **Artículo 41º**

Los funcionarios y servidores públicos que señala la ley o que administran o manejan fondos del Estado o de organismos sostenidos por éste deben hacer declaración jurada de bienes y rentas al tomar posesión de sus cargos, durante su ejercicio y al cesar en los mismos. La respectiva publicación se realiza en el diario oficial en la forma y condiciones que señala la ley.

Cuando se presume enriquecimiento ilícito, el Fiscal de la Nación, por denuncia de terceros o de oficio, formula cargos ante el Poder Judicial.

La ley establece la responsabilidad de los funcionarios y servidores públicos, así como el plazo de su inhabilitación para la función pública.

El plazo de prescripción se duplica en caso de delitos cometidos contra el patrimonio del Estado.

### **Artículo 42º**

Se reconocen los derechos de sindicación y huelga de los servidores públicos. No están comprendidos los funcionarios del Estado con poder de decisión y los que desempeñan cargos de confianza o de dirección, así como los miembros de las Fuerzas Armadas y de la Policía Nacional.

## **TÍTULO II DEL ESTADO Y LA NACION**

### **CAPITULO I DEL ESTADO, LA NACION Y EL TERRITORIO**

#### **Artículo 43º**

La República del Perú es democrática, social, independiente y soberana.

El Estado es uno e indivisible.

Su gobierno es unitario, representativo y descentralizado, y se organiza según el principio de la separación de poderes.

#### **Artículo 44º**

Son deberes primordiales del Estado: defender la soberanía nacional; garantizar la plena vigencia de los derechos humanos; proteger a la población de las amenazas contra su seguridad; y promover el bienestar general que se fundamenta en la justicia y en el desarrollo integral y equilibrado de la Nación.

Asimismo, es deber del Estado establecer y ejecutar la política de fronteras y promover la integración, particularmente latinoamericana, así como el desarrollo y la cohesión de las zonas fronterizas, en concordancia con la política exterior.

#### **Artículo 45º**

El poder del Estado emana del pueblo. Quienes lo ejercen lo hacen con las limitaciones y responsabilidades que la Constitución y las leyes establecen.

Ninguna persona, organización, Fuerza Armada, Policía Nacional o sector de la población puede arrogarse el ejercicio de ese poder. Hacerlo constituye rebelión o sedición.

#### **Artículo 46º**

Nadie debe obediencia a un gobierno usurpador, ni a quienes asumen funciones públicas en violación de la Constitución y de las leyes.

La población civil tiene el derecho de insurgencia en defensa del orden constitucional.

Son nulos los actos de quienes usurpan funciones públicas.

### **Artículo 47º**

La defensa de los intereses del Estado está a cargo de los Procuradores Públicos conforme a ley. El Estado está exonerado del pago de gastos judiciales.

### **Artículo 48º**

Son idiomas oficiales el castellano y, en las zonas donde predominen, también lo son el quechua, el aimara y las demás lenguas aborígenes, según la ley.

### **Artículo 49º**

La capital de la República del Perú es la ciudad de Lima. Su capital histórica es la ciudad del Cusco.

Son símbolos de la Patria la Bandera de tres franjas verticales con los colores rojo, blanco y rojo, y el Escudo y el Himno nacional establecidos por ley.

### **Artículo 50º**

Dentro de un régimen de independencia y autonomía, el Estado reconoce a la Iglesia Católica como elemento importante en la formación histórica, cultural y moral del Perú, y le presta su colaboración.

El Estado respeta otras confesiones y puede establecer formas de colaboración con ellas.

### **Artículo 51º**

La Constitución prevalece sobre toda norma legal; la ley, sobre las normas de inferior jerarquía, y así sucesivamente. La publicidad es esencial para la vigencia de toda norma del Estado.

### **Artículo 52º**

Son peruanos por nacimiento los nacidos en el territorio de la República. También lo son los nacidos en el exterior de padre o madre peruanos, inscritos en el registro correspondiente durante su minoría de edad.

Son asimismo peruanos los que adquieren la nacionalidad por naturalización o por opción, siempre que tengan residencia en el Perú.

### **Artículo 53º**

La ley regula las formas en que se adquiere o recupera la nacionalidad.

La nacionalidad peruana no se pierde, salvo por renuncia expresa ante autoridad peruana.

### **Artículo 54º**

El territorio del Estado es inalienable e inviolable. Comprende el suelo, el subsuelo, el dominio marítimo, y el espacio aéreo que los cubre.

El dominio marítimo del Estado comprende el mar adyacente a sus costas, así como su lecho y subsuelo, hasta la distancia de doscientas millas marinas medidas desde las líneas de base que establece la ley.

En su dominio marítimo, el Estado ejerce soberanía y jurisdicción, sin perjuicio de las libertades de comunicación internacional, de acuerdo con la ley y con los tratados ratificados por el Estado.

El Estado ejerce soberanía y jurisdicción sobre el espacio aéreo que cubre su territorio y el mar adyacente hasta el límite de las doscientas millas, sin perjuicio de las libertades de comunicación internacional, de conformidad con la ley y con los tratados ratificados por el Estado.

## **CAPITULO II DE LOS TRATADOS**

### **Artículo 55º**

Los tratados celebrados por el Estado y en vigor forman parte del derecho nacional.

### **Artículo 56º**

Los tratados deben ser aprobados por el Congreso antes de su ratificación por el Presidente de la República, siempre que versen sobre las siguientes materias:

- 1.Derechos Humanos.
- 2.Soberanía, dominio o integridad del Estado.
- 3.Defensa Nacional.
- 4.Obligaciones financieras del Estado.

También deben ser aprobados por el Congreso los tratados que crean, modifican o suprimen tributos; los que exigen modificación o derogación de alguna ley y los que requieren medidas legislativas para su ejecución.

### **Artículo 57º**

El Presidente de la República puede celebrar o ratificar tratados o adherir a éstos sin el requisito de la aprobación previa del Congreso en materias no contempladas en el Artículo precedente. En todos esos casos, debe dar cuenta al Congreso.

Cuando el tratado afecte disposiciones constitucionales debe ser aprobado por el mismo procedimiento que rige la reforma de la Constitución, antes de ser ratificado por el Presidente de la República.

La denuncia de los tratados es potestad del Presidente de la República, con cargo de dar cuenta al Congreso. En el caso de los tratados sujetos a aprobación del Congreso, la denuncia requiere aprobación previa de éste.

## **TÍTULO III DEL REGIMEN ECONOMICO**

### **CAPITULO I PRINCIPIOS GENERALES**

#### **Artículo 58º**

La iniciativa privada es libre. Se ejerce en una economía social de mercado. Bajo este régimen, el Estado orienta el desarrollo del país, y actúa principalmente en las áreas de promoción de empleo, salud, educación, seguridad, servicios públicos e infraestructura.

#### **Artículo 59º**

El Estado estimula la creación de riqueza y garantiza la libertad de trabajo y la libertad de empresa, comercio e industria. El ejercicio de estas libertades no debe ser lesivo a la moral, ni a la salud, ni a la seguridad públicas. El Estado brinda oportunidades de superación a los sectores que sufren cualquier desigualdad; en tal sentido, promueve las pequeñas empresas en todas sus modalidades.

#### **Artículo 60º**

El Estado reconoce el pluralismo económico. La economía nacional se sustenta en la coexistencia de diversas formas de propiedad y de empresa.

Sólo autorizado por ley expresa, el Estado puede realizar subsidiariamente actividad empresarial, directa o indirecta, por razón de alto interés público o de manifiesta conveniencia nacional.

La actividad empresarial, pública o no pública, recibe el mismo tratamiento legal.

#### **Artículo 61º**

El Estado facilita y vigila la libre competencia. Combate toda práctica que la limite y el abuso de posiciones dominantes o monopólicas. Ninguna ley ni concertación puede autorizar ni establecer monopolios.

La prensa, la radio, la televisión y los demás medios de expresión y comunicación social; y, en general, las empresas, los bienes y servicios relacionados con la libertad de expresión y de comunicación, no pueden ser objeto de exclusividad, monopolio ni acaparamiento, directa ni indirectamente, por parte del Estado ni de

particulares.

#### **Artículo 62º**

La libertad de contratar garantiza que las partes pueden pactar válidamente según las normas vigentes al tiempo del contrato. Los términos contractuales no pueden ser modificados por leyes u otras disposiciones de cualquier clase. Los conflictos derivados de la relación contractual sólo se solucionan en la vía arbitral o en la judicial, según los mecanismos de protección previstos en el contrato o contemplados en la ley.

Mediante contratos-ley, el Estado puede establecer garantías y otorgar seguridades. No pueden ser modificados legislativamente, sin perjuicio de la protección a que se refiere el párrafo precedente.

#### **Artículo 63º**

La inversión nacional y la extranjera se sujetan a las mismas condiciones. La producción de bienes y servicios y el comercio exterior son libres. Si otro país o países adoptan medidas proteccionistas o discriminatorias que perjudiquen el interés nacional, el Estado puede, en defensa de éste, adoptar medidas análogas.

En todo contrato del Estado y de las personas de derecho público con extranjeros domiciliados consta el sometimiento de éstos a las leyes y órganos jurisdiccionales de la República y su renuncia a toda reclamación diplomática. Pueden ser exceptuados de la jurisdicción nacional los contratos de carácter financiero.

El Estado y las demás personas de derecho público pueden someter las controversias derivadas de relación contractual a tribunales constituidos en virtud de tratados en vigor. Pueden también someterlas a arbitraje nacional o internacional, en la forma en que lo disponga la ley.

#### **Artículo 64º**

El Estado garantiza la libre tenencia y disposición de moneda extranjera.

#### **Artículo 65º**

El Estado defiende el interés de los consumidores y usuarios. Para tal efecto garantiza el derecho a la información sobre los bienes y servicios que se encuentran a su disposición en el mercado. Asimismo vela, en particular, por la salud y la seguridad de la población.

### **CAPITULO II DEL AMBIENTE Y LOS RECURSOS NATURALES**

#### **Artículo 66º**

Los recursos naturales, renovables y no renovables, son patrimonio de la Nación. El Estado es soberano en su aprovechamiento.

Por ley orgánica se fijan las condiciones de su utilización y de su otorgamiento a particulares. La concesión otorga a su titular un derecho real, sujeto a dicha norma legal.

#### **Artículo 67º**

El Estado determina la política nacional del ambiente. Promueve el uso sostenible de sus recursos naturales.

#### **Artículo 68º**

El Estado está obligado a promover la conservación de la diversidad biológica y de las áreas naturales protegidas.

#### **Artículo 69º**

El Estado promueve el desarrollo sostenible de la Amazonía con una legislación adecuada.

## CAPITULO III DE LA PROPIEDAD

### Artículo 70º

El derecho de propiedad es inviolable. El Estado lo garantiza. Se ejerce en armonía con el bien común y dentro de los límites de ley. A nadie puede privarse de su propiedad sino, exclusivamente, por causa de seguridad nacional o necesidad pública, declarada por ley, y previo pago en efectivo de indemnización justipreciada que incluya compensación por el eventual perjuicio. Hay acción ante el Poder Judicial para contestar el valor de la propiedad que el Estado haya señalado en el procedimiento expropiatorio.

### Artículo 71º

En cuanto a la propiedad, los extranjeros, sean personas naturales o jurídicas, están en la misma condición que los peruanos, sin que, en caso alguno, puedan invocar excepción ni protección diplomática. Sin embargo, dentro de cincuenta kilómetros de las fronteras, los extranjeros no pueden adquirir ni poseer por título alguno, minas, tierras, bosques, aguas, combustibles ni fuentes de energía, directa ni indirectamente, individualmente ni en sociedad, bajo pena de perder, en beneficio del Estado, el derecho así adquirido. Se exceptúa el caso de necesidad pública expresamente declarada por decreto supremo aprobado por el Consejo de Ministros conforme a ley.

### Artículo 72º

La ley puede, sólo por razón de seguridad nacional, establecer temporalmente restricciones y prohibiciones específicas para la adquisición, posesión, explotación y transferencia de determinados bienes.

### Artículo 73º

Los bienes de dominio público son inalienables e imprescriptibles. Los bienes de uso público pueden ser concedidos a particulares conforme a ley, para su aprovechamiento económico.

## CAPITULO IV DEL REGIMEN TRIBUTARIO Y PRESUPUESTAL

### Artículo 74º

Los tributos se crean, modifican o derogan, o se establece una exoneración, exclusivamente por ley o decreto legislativo en caso de delegación de facultades, salvo los aranceles y tasas, los cuales se regulan mediante decreto supremo.

Los Gobiernos Regionales y los Gobiernos Locales pueden crear, modificar y suprimir contribuciones y tasas, o exonerar de éstas, dentro de su jurisdicción, y con los límites que señala la ley. El Estado, al ejercer la potestad tributaria, debe respetar los principios de reserva de la ley, y los de igualdad y respeto de los derechos fundamentales de la persona. Ningún tributo puede tener carácter confiscatorio.

Las leyes de presupuesto y los decretos de urgencia no pueden contener normas sobre materia tributaria. Las leyes relativas a tributos de periodicidad anual rigen a partir del primero de enero del año siguiente a su promulgación.

No surten efecto las normas tributarias dictadas en violación de lo que establece el presente artículo.

(\* Artículo modificado por Ley N° 28.390 del 17 de noviembre de 2004)

## **Artículo 75º**

El Estado sólo garantiza el pago de la deuda pública contraída por gobiernos constitucionales de acuerdo con la Constitución y la ley.

Las operaciones de endeudamiento interno y externo del Estado se aprueban conforme a ley.

Los municipios pueden celebrar operaciones de crédito con cargo a sus recursos y bienes propios, sin requerir autorización legal.

## **Artículo 76º**

Las obras y la adquisición de suministros con utilización de fondos o recursos públicos se ejecutan obligatoriamente por contrata y licitación pública, así como también la adquisición o la enajenación de bienes.

La contratación de servicios y proyectos cuya importancia y cuyo monto señala la Ley de Presupuesto se hace por concurso público. La ley establece el procedimiento, las excepciones y las respectivas responsabilidades.

## **Artículo 77º**

La administración económica y financiera del Estado se rige por el presupuesto que anualmente aprueba el Congreso. La estructura del presupuesto del sector público contiene dos secciones: gobierno central e instancias descentralizadas.

El presupuesto asigna equitativamente los recursos públicos, su programación y ejecución responden a los criterios de eficiencia de necesidades sociales básicas y de descentralización. Corresponden a las respectivas circunscripciones, conforme a ley, recibir una participación adecuada del total de los ingresos y rentas obtenidos por el Estado en la explotación de los recursos naturales en cada zona en calidad de canon.

(\* *Artículo modificado por Ley N° 26.472 del 13 de junio de 1995.*)

## **Artículo 78º**

El Presidente de la República envía al Congreso el proyecto de Ley de Presupuesto dentro de un plazo que vence el 30 de agosto de cada año.

En la misma fecha, envía también los proyectos de ley de endeudamiento y de equilibrio financiero.

El proyecto presupuestal debe estar efectivamente equilibrado.

Los préstamos procedentes del Banco Central de Reserva o del Banco de la Nación no se contabilizan como ingreso fiscal.

No pueden cubrirse con empréstitos los gastos de carácter permanente.

No puede aprobarse el presupuesto sin partida destinada al servicio de la deuda pública.

## **Artículo 79º**

Los representantes ante el Congreso no tienen iniciativa para crear ni aumentar gastos públicos, salvo en lo que se refiere a su presupuesto.

El Congreso no puede aprobar tributos con fines predeterminados, salvo por solicitud del Poder Ejecutivo.

En cualquier otro caso, las leyes de índole tributaria referidas a beneficios o exoneraciones requieren previo informe del Ministerio de Economía y Finanzas.

Sólo por ley expresa, aprobada por dos tercios de los congresistas, puede establecerse selectiva y temporalmente un tratamiento tributario especial para una determinada zona del país.

## **Artículo 80º**

El Ministro de Economía y Finanzas sustenta, ante el Pleno del Congreso, el pliego de ingresos. Cada ministro sustenta los pliegos de egresos de su sector. El Presidente de la Corte Suprema, el Fiscal de la Nación y el Presidente del Jurado Nacional de Elecciones sustentan los pliegos correspondientes a cada institución.

Si la autógrafo de la Ley de Presupuesto no es remitida al Poder Ejecutivo hasta el treinta de noviembre, entra

en vigencia el Proyecto de éste, que es promulgado por decreto legislativo.

Los créditos suplementarios, habilitaciones y transferencias de partidas se tramitan ante el Congreso tal como la Ley de Presupuesto. Durante el receso parlamentario se tramitan ante la Comisión Permanente. Para aprobarlos, se requiere los votos de los tres quintos del número legal de sus miembros.

### **Artículo 81º**

La Cuenta General de la República, acompañada del informe de auditoría de la Contraloría General, es remitida por el Presidente de la República al Congreso en un plazo que vence el quince de noviembre del año siguiente al de ejecución del presupuesto.

La Cuenta General es examinada y dictaminada por una comisión revisora dentro de los noventa días siguientes a su presentación. El Congreso se pronuncia en un plazo de treinta días. Si no hay pronunciamiento del Congreso en el plazo señalado, se eleva el dictamen de la Comisión Revisora al Poder Ejecutivo para que éste promulgue un decreto legislativo que contiene la Cuenta General.

### **Artículo 82º**

La Contraloría General de la República es una entidad descentralizada de Derecho Público que goza de autonomía conforme a su ley orgánica. Es el órgano superior del Sistema Nacional de Control. Supervisa la legalidad de la ejecución del Presupuesto del Estado, de las operaciones de la deuda pública y de los actos de las instituciones sujetas a control.

El Contralor General es designado por el Congreso, a propuesta del Poder Ejecutivo, por siete años. Puede ser removido por el Congreso por falta grave.

## **CAPITULO V DE LA MONEDA Y LA BANCA**

### **Artículo 83º**

La ley determina el sistema monetario de la República. La emisión de billetes y monedas es facultad exclusiva del Estado. La ejerce por intermedio del Banco Central de Reserva del Perú.

### **Artículo 84º**

El Banco Central es persona jurídica de derecho público. Tiene autonomía dentro del marco de su Ley Orgánica.

La finalidad del Banco Central es preservar la estabilidad monetaria. Sus funciones son: regular la moneda y el crédito del sistema financiero, administrar las reservas internacionales a su cargo, y las demás funciones que señala su ley orgánica.

El Banco informa al país, exacta y periódicamente, sobre el estado de las finanzas nacionales, bajo responsabilidad de su Directorio.

El Banco está prohibido de conceder financiamiento al erario, salvo la compra, en el mercado secundario, de valores emitidos por el Tesoro Público, dentro del límite que señala su Ley Orgánica.

### **Artículo 85º**

El Banco puede efectuar operaciones y celebrar convenios de crédito para cubrir desequilibrios transitorios en la posición de las reservas internacionales.

Requiere autorización por ley cuando el monto de tales operaciones o convenios supera el límite señalado por el Presupuesto del Sector Público, con cargo de dar cuenta al Congreso.

### **Artículo 86º**

El Banco es gobernado por un Directorio de siete miembros. El Poder Ejecutivo designa a cuatro, entre ellos al Presidente. El Congreso ratifica a éste y elige a los tres restantes, con la mayoría absoluta del número legal de sus miembros.

Todos los directores del Banco son nombrados por el período constitucional que corresponde al Presidente de la República. No representan a entidad ni interés particular algunos. El Congreso puede removerlos por falta grave. En caso de remoción, los nuevos directores completan el correspondiente período constitucional.

### **Artículo 87º**

El Estado fomenta y garantiza el ahorro. La ley establece las obligaciones y los límites de las empresas que reciben ahorros del público, así como el modo y los alcances de dicha garantía.

La Superintendencia de Banca, Seguros y Administradoras Privadas de Fondos de Pensiones ejerce el control de las empresas bancarias, de seguros, de administración de fondos de pensiones, de las demás que reciben depósitos del público y de aquellas otras que, por realizar operaciones conexas o similares, determine la ley.

La ley establece la organización y la autonomía funcional de la Superintendencia de Banca, Seguros y Administradoras Privadas de Fondos de Pensiones.

El Poder Ejecutivo designa al Superintendente de Banca, Seguros y Administradoras Privadas de Fondos de Pensiones por el plazo correspondiente a su período constitucional. El Congreso lo ratifica.

*(\* Artículo modificado por Ley N° 28.484 del 5 de abril de 2005)*

## **CAPITULO VI DEL REGIMEN AGRARIO Y DE LAS COMUNIDADES CAMPESINAS Y NATIVAS**

### **Artículo 88º**

El Estado apoya preferentemente el desarrollo agrario. Garantiza el derecho de propiedad sobre la tierra, en forma privada o comunal o en cualquiera otra forma asociativa. La ley puede fijar los límites y la extensión de la tierra según las peculiaridades de cada zona.

Las tierras abandonadas, según previsión legal, pasan al dominio del Estado para su adjudicación en venta.

### **Artículo 89º**

Las Comunidades Campesinas y las Nativas tienen existencia legal y son personas jurídicas.

Son autónomas en su organización, en el trabajo comunal y en el uso y la libre disposición de sus tierras, así como en lo económico y administrativo, dentro del marco que la ley establece. La propiedad de sus tierras es imprescriptible, salvo en el caso de abandono previsto en el Artículo anterior.

El Estado respeta la identidad cultural de las Comunidades Campesinas y Nativas.

## **TITULO IV DE LA ESTRUCTURA DEL ESTADO**

### **CAPITULO I PODER LEGISLATIVO**

### **Artículo 90º**

El Poder Legislativo reside en el Congreso, el cual consta de Cámara única.

El número de congresistas es de ciento veinte. El Congreso se elige por un período de cinco años mediante un proceso electoral organizado conforme a ley. Los candidatos a la presidencia no pueden integrar las listas de candidatos a congresistas. Los candidatos a vicepresidentes pueden ser simultáneamente candidatos a una representación a Congreso.

Para ser elegido congresista se requiere ser peruano de nacimiento, haber cumplido veinticinco años y gozar del derecho de sufragio.

### **Artículo 91º**

No pueden ser elegidos miembros del Parlamento Nacional si no han renunciado al cargo seis (6) meses antes de la elección:

1. Los ministros y viceministros de Estado, el Contralor General.
2. Los miembros del Tribunal Constitucional, del Consejo Nacional de la Magistratura, del Poder Judicial, del Ministerio Público, del Jurado Nacional de Elecciones, ni el Defensor del Pueblo.
3. El Presidente del Banco Central de Reserva, el Superintendente de Banca, Seguros y Administradoras Privadas de Fondos de Pensiones y el Superintendente Nacional de Administración Tributaria.
4. Los miembros de las Fuerzas Armadas y de la Policía Nacional en actividad.
5. Los demás casos que la Constitución prevé.

(*\* Artículo modificado por Ley N° 28.607 del 4 de octubre de 2005*)

### **Artículo 92º**

La función de congresista es de tiempo completo; le está prohibido desempeñar cualquier cargo o ejercer cualquier profesión u oficio, durante las horas de funcionamiento del Congreso.

El mandato del congresista es incompatible con el ejercicio de cualquiera otra función pública, excepto la de Ministro de Estado, y el desempeño, previa autorización del Congreso, de comisiones extraordinarias de carácter internacional.

La función de congresista es, asimismo, incompatible con la condición de gerente, apoderado, representante, mandatario, abogado, accionista mayoritario o miembro del Directorio de empresas que tienen con el Estado contratos de obras, de suministro o de aprovisionamiento, o que administran rentas públicas o prestan servicios públicos.

La función de congresista es incompatible con cargos similares en empresas que, durante el mandato del congresista, obtengan concesiones del Estado, así como en empresas del sistema crediticio financiero supervisadas por la Superintendencia de Banca, Seguros y Administradoras Privadas de Fondos de Pensiones.

(*\* Artículo modificado por Ley N° 28.484 del 5 de abril de 2005*)

### **Artículo 93º**

Los congresistas representan a la Nación. No están sujetos a mandato imperativo ni a interpelación.

No son responsables ante autoridad ni órgano jurisdiccional alguno por las opiniones y votos que emiten en el ejercicio de sus funciones.

No pueden ser procesados ni presos sin previa autorización del Congreso o de la Comisión Permanente, desde que son elegidos hasta un mes después de haber cesado en sus funciones, excepto por delito flagrante, caso en el cual son puestos a disposición del Congreso o de la Comisión Permanente dentro de las veinticuatro horas, a fin de que se autorice o no la privación de la libertad y el enjuiciamiento.

#### **Artículo 94º**

El Congreso elabora y aprueba su Reglamento, que tiene fuerza de ley; elige a sus representantes en la Comisión Permanente y en las demás comisiones; establece la organización y las atribuciones de los grupos parlamentarios; gobierna su economía; sanciona su presupuesto; nombra y remueve a sus funcionarios y empleados, y les otorga los beneficios que les corresponden de acuerdo a ley.

#### **Artículo 95º**

El mandato legislativo es irrenunciable.

Las sanciones disciplinarias que impone el Congreso a los representantes y que implican suspensión de funciones no pueden exceder de ciento veinte días de legislatura.

#### **Artículo 96º**

Cualquier representante a Congreso puede pedir a los Ministros de Estado, al Jurado Nacional de Elecciones, al Contralor General, al Banco Central de Reserva, a la Superintendencia de Banca, Seguros y Administradoras Privadas de Fondos de Pensiones, a los Gobiernos Regionales y Locales y a las instituciones que señala la ley, los informes que estime necesarios.

*(\* Párrafo modificado por Ley N° 28.484 del 5 de abril de 2005)*

El pedido se hace por escrito y de acuerdo con el Reglamento del Congreso. La falta de respuesta da lugar a las responsabilidades de ley.

#### **Artículo 97º**

El Congreso puede iniciar investigaciones sobre cualquier asunto de interés público. Es obligatorio comparecer, por requerimiento, ante las comisiones encargadas de tales investigaciones, bajo los mismos apremios que se observan en el procedimiento judicial.

Para el cumplimiento de sus fines, dichas comisiones pueden acceder a cualquier información, la cual puede implicar el levantamiento del secreto bancario y el de la reserva tributaria; excepto la información que afecte la intimidad personal. Sus conclusiones no obligan a los órganos jurisdiccionales.

#### **Artículo 98º**

El Presidente de la República está obligado a poner a disposición del Congreso los efectivos de las Fuerzas Armadas y de la Policía Nacional que demande el Presidente del Congreso.

Las Fuerzas Armadas y la Policía Nacional no pueden ingresar en el recinto del Congreso sino con autorización de su propio Presidente.

#### **Artículo 99º**

Corresponde a la Comisión Permanente acusar ante el Congreso: al Presidente de la República; a los representantes a Congreso; a los Ministros de Estado; a los miembros del Tribunal Constitucional; a los miembros del Consejo Nacional de la Magistratura; a los vocales de la Corte Suprema; a los fiscales supremos; al Defensor del Pueblo y al Contralor General por infracción de la Constitución y por todo delito que cometan en el ejercicio de sus funciones y hasta cinco años después de que hayan cesado en éstas.

#### **Artículo 100º**

Corresponde al Congreso, sin participación de la Comisión Permanente, suspender o no al funcionario acusado o inhabilitarlo para el ejercicio de la función pública hasta por diez años, o destituirlo de su función sin perjuicio de cualquiera otra responsabilidad.

El acusado tiene derecho, en este trámite, a la defensa por sí mismo y con asistencia de abogado ante la Comisión Permanente y ante el Pleno del Congreso.

En caso de resolución acusatoria de contenido penal, el Fiscal de la Nación formula denuncia ante la Corte Suprema en el plazo de cinco días. El Vocal Supremo Penal abre la instrucción correspondiente.

La sentencia absolutoria de la Corte Suprema devuelve al acusado sus derechos políticos.

Los términos de la denuncia fiscal y del auto apertorio de instrucción no pueden exceder ni reducir los términos de la acusación del Congreso.

### **Artículo 101º**

Los miembros de la Comisión Permanente del Congreso son elegidos por éste. Su número tiende a ser proporcional al de los representantes de cada grupo parlamentario y no excede del veinticinco por ciento del número total de congresistas.

Son atribuciones de la Comisión Permanente:

1. Designar al Contralor General, a propuesta del Presidente de la República.
2. Ratificar la designación del Presidente del Banco Central de Reserva y del Superintendente de Banca, Seguros y Administradoras Privadas de Fondos de Pensiones.

(*\* Numeral modificado por Ley N° 28.484 del 5 de abril de 2005*)

3. Aprobar los créditos suplementarios y las transferencias y habilitaciones del Presupuesto, durante el receso parlamentario.
4. Ejercitar la delegación de facultades legislativas que el Congreso le otorgue. No pueden delegarse a la Comisión Permanente materias relativas a reforma constitucional, ni a la aprobación de tratados internacionales, leyes orgánicas, Ley de Presupuesto y Ley de la Cuenta General de la República.
5. Las demás que le asigna la Constitución y las que le señala el Reglamento del Congreso.

### **Artículo 102º**

Son atribuciones del Congreso:

1. Dar leyes y resoluciones legislativas, así como interpretar, modificar o derogar las existentes.
2. Velar por el respeto de la Constitución y de las leyes, y disponer lo conveniente para hacer efectiva la responsabilidad de los infractores.
3. Aprobar los tratados, de conformidad con la Constitución.
4. Aprobar el Presupuesto y la Cuenta General.
5. Autorizar empréstitos, conforme a la Constitución.
6. Ejercer el derecho de amnistía.
7. Aprobar la demarcación territorial que proponga el Poder Ejecutivo.
8. Prestar consentimiento para el ingreso de tropas extranjeras en el territorio de la República, siempre que no afecte, en forma alguna, la soberanía nacional.
9. Autorizar al Presidente de la República para salir del país.
10. Ejercer las demás atribuciones que le señala la Constitución y las que son propias de la función legislativa.

## **CAPITULO II DE LA FUNCION LEGISLATIVA**

### **Artículo 103º**

Pueden expedirse leyes especiales porque así lo exige la naturaleza de las cosas, pero no por razón de las diferencias de las personas. La ley, desde su entrada en vigencia, se aplica a las consecuencias de las relaciones y situaciones jurídicas existentes y no tiene fuerza ni efectos retroactivos; salvo, en ambos supuestos, en materia penal cuando favorece al reo. La ley se deroga sólo por otra ley. También queda sin efecto por sentencia que declara su inconstitucionalidad.

La Constitución no ampara el abuso del derecho

(*\* Artículo modificado por Ley N° 28.389 del 17 de noviembre de 2004*)

#### **Artículo 104º**

El Congreso puede delegar en el Poder Ejecutivo la facultad de legislar, mediante decretos legislativos, sobre la materia específica y por el plazo determinado establecidos en la ley autoritativa.

No pueden delegarse las materias que son indelegables a la Comisión Permanente.

Los decretos legislativos están sujetos, en cuanto a su promulgación, publicación, vigencia y efectos, a las mismas normas que rigen para la ley.

El Presidente de la República da cuenta al Congreso o a la Comisión Permanente de cada decreto legislativo.

#### **Artículo 105º**

Ningún proyecto de ley puede sancionarse sin haber sido previamente aprobado por la respectiva Comisión dictaminadora, salvo excepción señalada en el Reglamento del Congreso. Tienen preferencia del Congreso los proyectos enviados por el Poder Ejecutivo con carácter de urgencia.

#### **Artículo 106º**

Mediante leyes orgánicas se regulan la estructura y el funcionamiento de las entidades del Estado previstas en la Constitución, así como también las otras materias cuya regulación por ley orgánica está establecida en la Constitución.

Los proyectos de ley orgánica se tratan como cualquiera otra ley. Para su aprobación o modificación, se requiere el voto de más de la mitad del número legal de miembros del Congreso.

### **CAPITULO III DE LA FORMACION Y PROMULGACION DE LAS LEYES**

#### **Artículo 107º**

El Presidente de la República y los Congresistas tienen derecho a iniciativa en la formación de leyes.

También tienen el mismo derecho en las materias que les son propias los otros poderes del Estado, las instituciones públicas autónomas, los Gobiernos Regionales, los Gobiernos Locales y los colegios profesionales. Asimismo lo tienen los ciudadanos que ejercen el derecho de iniciativa conforme a ley.

(\* *Artículo modificado por Ley N° 28.390 del 17 de noviembre de 2004*)

#### **Artículo 108º**

La ley aprobada según lo previsto por la Constitución, se envía al Presidente de la República para su promulgación dentro de un plazo de quince días. En caso de no promulgación por el Presidente de la República, la promulga el Presidente del Congreso, o el de la Comisión Permanente, según corresponda.

Si el Presidente de la República tiene observaciones que hacer sobre el todo o una parte de la ley aprobada en el Congreso, las presenta a éste en el mencionado término de quince días.

Reconsiderada la ley por el Congreso, su Presidente la promulga, con el voto de más de la mitad del número legal de miembros del Congreso.

#### **Artículo 109º**

La ley es obligatoria desde el día siguiente de su publicación en el diario oficial, salvo disposición contraria de la misma ley que posterga su vigencia en todo o en parte.

### **CAPITULO IV PODER EJECUTIVO**

### **Artículo 110º**

El Presidente de la República es el Jefe del Estado y personifica a la Nación.

Para ser elegido Presidente de la República se requiere ser peruano por nacimiento, tener más de treinta y cinco años de edad al momento de la postulación y gozar del derecho de sufragio.

### **Artículo 111º**

El Presidente de la República se elige por sufragio directo. Es elegido el candidato que obtiene más de la mitad de los votos. Los votos viciados o en blanco no se computan.

Si ninguno de los candidatos obtiene la mayoría absoluta, se procede a una segunda elección, dentro de los treinta días siguientes a la proclamación de los cómputos oficiales, entre los candidatos que han obtenido las dos más altas mayorías relativas.

Junto con el Presidente de la República son elegidos, de la misma manera, con los mismos requisitos y por igual término, dos vicepresidentes.

### **Artículo 112º**

El mandato presidencial es de cinco años, no hay reelección inmediata. Transcurrido otro periodo constitucional, como mínimo, el ex presidente puede volver a postular, sujeto a las mismas condiciones.

(\* *Artículo modificado por Ley N° 27.365 del 5 de noviembre de 2000.*)

### **Artículo 113º**

La Presidencia de la República vaca por:

1. Muerte del Presidente de la República.
2. Su permanente incapacidad moral o física, declarada por el Congreso.
3. Aceptación de su renuncia por el Congreso.
4. Salir del territorio nacional sin permiso del Congreso o no regresar a él dentro del plazo fijado. Y
5. Destitución, tras haber sido sancionado por alguna de las infracciones mencionadas en el Artículo 117 de la Constitución.

### **Artículo 114º**

El ejercicio de la Presidencia de la República se suspende por:

1. Incapacidad temporal del Presidente, declarada por el Congreso, o
2. Hallarse éste sometido a proceso judicial, conforme al Artículo 117 de la Constitución.

### **Artículo 115º**

Por impedimento temporal o permanente del Presidente de la República, asume sus funciones el Primer Vicepresidente. En defecto de éste, el Segundo Vicepresidente. Por impedimento de ambos, el Presidente del Congreso. Si el impedimento es permanente, el Presidente del Congreso convoca de inmediato a elecciones. Cuando el Presidente de la República sale del territorio nacional, el Primer Vicepresidente se encarga del despacho. En su defecto, lo hace el Segundo Vicepresidente.

### **Artículo 116º**

El Presidente de la República presta juramento de ley y asume el cargo, ante el Congreso, el 28 de julio del año en que se realiza la elección.

### **Artículo 117º**

El Presidente de la República sólo puede ser acusado, durante su período, por traición a la patria; por impedir las elecciones presidenciales, parlamentarias, regionales o municipales; por disolver el Congreso, salvo en los casos previstos en el Artículo 134 de la Constitución, y por impedir su reunión o funcionamiento, o los del Jurado Nacional de Elecciones y otros organismos del sistema electoral.

### **Artículo 118º**

Corresponde al Presidente de la República:

1. Cumplir y hacer cumplir la Constitución y los tratados, leyes y demás disposiciones legales.
2. Representar al Estado, dentro y fuera de la República.
3. Dirigir la política general del Gobierno.
4. Velar por el orden interno y la seguridad exterior de la República.
5. Convocar a elecciones para Presidente de la República y para representantes a Congreso, así como para alcaldes y regidores y demás funcionarios que señala la ley.
6. Convocar al Congreso a legislatura extraordinaria; y firmar, en ese caso, el decreto de convocatoria.
7. Dirigir mensajes al Congreso en cualquier época y obligatoriamente, en forma personal y por escrito, al instalarse la primera legislatura ordinaria anual. Los mensajes anuales contienen la exposición detallada de la situación de la República y las mejoras y reformas que el Presidente juzgue necesarias y convenientes para su consideración por el Congreso. Los mensajes del Presidente de la República, salvo el primero de ellos, son aprobados por el Consejo de Ministros.
8. Ejercer la potestad de reglamentar las leyes sin transgredirlas ni desnaturalizarlas; y, dentro de tales límites, dictar decretos y resoluciones.
9. Cumplir y hacer cumplir las sentencias y resoluciones de los órganos jurisdiccionales.
10. Cumplir y hacer cumplir las resoluciones del Jurado Nacional de Elecciones.
11. Dirigir la política exterior y las relaciones internacionales; y celebrar y ratificar tratados.
12. Nombrar embajadores y ministros plenipotenciarios, con aprobación del Consejo de Ministros, con cargo de dar cuenta al Congreso.
13. Recibir a los agentes diplomáticos extranjeros, y autorizar a los cónsules el ejercicio de sus funciones.
14. Presidir el Sistema de Defensa Nacional; y organizar, distribuir y disponer el empleo de las Fuerzas Armadas y de la Policía Nacional.
15. Adoptar las medidas necesarias para la defensa de la República, de la integridad del territorio y de la soberanía del Estado.
16. Declarar la guerra y firmar la paz, con autorización del Congreso.
17. Administrar la hacienda pública.
18. Negociar los empréstitos.
19. Dictar medidas extraordinarias, mediante decretos de urgencia con fuerza de ley, en materia económica y financiera, cuando así lo requiere el interés nacional y con cargo de dar cuenta al Congreso. El Congreso puede modificar o derogar los referidos decretos de urgencia.
20. Regular las tarifas arancelarias.
21. Conceder indultos y conmutar penas. Ejercer el derecho de gracia en beneficio de los procesados en los casos en que la etapa de instrucción haya excedido el doble de su plazo más su ampliatoria.
22. Conferir condecoraciones en nombre de la Nación, con acuerdo del Consejo de Ministros.
23. Autorizar a los peruanos para servir en un ejército extranjero. Y
24. Ejercer las demás funciones de gobierno y administración que la Constitución y las leyes le encomiendan.

## **CAPITULO V DEL CONSEJO DE MINISTROS**

### **Artículo 119º**

La dirección y la gestión de los servicios públicos están confiadas al Consejo de Ministros; y a cada ministro en los asuntos que competen a la cartera a su cargo.

### **Artículo 120º**

Son nulos los actos del Presidente de la República que carecen de refrendación ministerial.

### **Artículo 121º**

Los ministros, reunidos, forman el Consejo de Ministros. La ley determina su organización y funciones. El Consejo de Ministros tiene su Presidente. Corresponde al Presidente de la República presidir el Consejo de Ministros cuando lo convoca o cuando asiste a sus sesiones.

### **Artículo 122º**

El Presidente de la República nombra y remueve al Presidente del Consejo. Nombra y remueve a los demás ministros, a propuesta y con acuerdo, respectivamente, del Presidente del Consejo.

### **Artículo 123º**

Al Presidente del Consejo de Ministros, quien puede ser ministro sin cartera, le corresponde:

1. Ser, después del Presidente de la República, el portavoz autorizado del gobierno.
2. Coordinar las funciones de los demás ministros.
3. Refrendar los decretos legislativos, los decretos de urgencia y los demás decretos y resoluciones que señalan la Constitución y la ley.

### **Artículo 124º**

Para ser ministro de Estado, se requiere ser peruano por nacimiento, ciudadano en ejercicio y haber cumplido veinticinco años de edad. Los miembros de las Fuerzas Armadas y de la Policía Nacional pueden ser ministros.

### **Artículo 125º**

Son atribuciones del Consejo de Ministros:

1. Aprobar los proyectos de ley que el Presidente de la República somete al Congreso.
2. Aprobar los decretos legislativos y los decretos de urgencia que dicta el Presidente de la República, así como los proyectos de ley y los decretos y resoluciones que dispone la ley.
3. Deliberar sobre asuntos de interés público. Y
4. Las demás que le otorgan la Constitución y la ley.

### **Artículo 126º**

Todo acuerdo del Consejo de Ministros requiere el voto aprobatorio de la mayoría de sus miembros, y consta en acta.

Los ministros no pueden ejercer otra función pública, excepto la legislativa.

Los ministros no pueden ser gestores de intereses propios o de terceros ni ejercer actividad lucrativa, ni intervenir en la dirección o gestión de empresas ni asociaciones privadas.

### **Artículo 127º**

No hay ministros interinos. El Presidente de la República puede encomendar a un ministro que, con retención de su cartera, se encargue de otra por impedimento del que la sirve, sin que este encargo pueda prolongarse por más de treinta días ni trasmitirse a otros ministros.

### **Artículo 128º**

Los ministros son individualmente responsables por sus propios actos y por los actos presidenciales que refrendan.

Todos los ministros son solidariamente responsables por los actos delictivos o violatorios de la Constitución o de las leyes en que incurra el Presidente de la República o que se acuerden en Consejo, aunque salven su voto, a no ser que renuncien inmediatamente.

### **Artículo 129º**

El Consejo de Ministros en pleno o los ministros por separado pueden concurrir a las sesiones del Congreso y participar en sus debates con las mismas prerrogativas que los parlamentarios, salvo la de votar si no son

congresistas.

Concurren también cuando son invitados para informar.

El Presidente del Consejo o uno, por lo menos, de los ministros concurre periódicamente a las sesiones plenarias del Congreso para la estación de preguntas.

## **CAPITULO VI DE LAS RELACIONES CON EL PODER LEGISLATIVO**

### **Artículo 130º**

Dentro de los treinta días de haber asumido sus funciones, el Presidente del Consejo concurre al Congreso, en compañía de los demás ministros, para exponer y debatir la política general del gobierno y las principales medidas que requiere su gestión.

Plantea al efecto cuestión de confianza.

Si el Congreso no está reunido, el Presidente de la República convoca a legislatura extraordinaria.

### **Artículo 131º**

Es obligatoria la concurrencia del Consejo de Ministros, o de cualquiera de los ministros, cuando el Congreso los llama para interpelarlos.

La interpelación se formula por escrito. Debe ser presentada por no menos del quince por ciento del número legal de congresistas. Para su admisión, se requiere el voto del tercio del número de representantes hábiles; la votación se efectúa indefectiblemente en la siguiente sesión.

El Congreso señala día y hora para que los ministros contesten la interpelación. Esta no puede realizarse ni votarse antes del tercer día de su admisión ni después del décimo.

### **Artículo 132º**

El Congreso hace efectiva la responsabilidad política del Consejo de Ministros, o de los ministros por separado, mediante el voto de censura o el rechazo de la cuestión de confianza. Esta última sólo se plantea por iniciativa ministerial.

Toda moción de censura contra el Consejo de Ministros, o contra cualquiera de los ministros, debe ser presentada por no menos del veinticinco por ciento del número legal de congresistas. Se debate y vota entre el cuarto y el décimo día natural después de su presentación. Su aprobación requiere del voto de más de la mitad del número legal de miembros del Congreso.

El Consejo de Ministros, o el ministro censurado, debe renunciar.

El Presidente de la República acepta la dimisión dentro de las setenta y dos horas siguientes.

La desaprobación de una iniciativa ministerial no obliga al ministro a dimitir, salvo que haya hecho cuestión de confianza de la aprobación.

### **Artículo 133º**

El Presidente del Consejo de Ministros puede plantear ante el Congreso una cuestión de confianza a nombre del Consejo. Si la confianza le es rehusada, o si es censurado, o si renuncia o es removido por el Presidente de la República, se produce la crisis total del gabinete.

### **Artículo 134º**

El Presidente de la República está facultado para disolver el Congreso si éste ha censurado o negado su confianza a dos Consejos de Ministros. El decreto de disolución contiene la convocatoria a elecciones para un nuevo Congreso. Dichas elecciones se realizan dentro de los cuatro meses de la fecha de disolución, sin que pueda alterarse el sistema electoral preexistente. No puede disolverse el Congreso en el último año de su mandato. Disuelto el Congreso, se mantiene en funciones la Comisión Permanente, la cual no puede ser disuelta.

No hay otras formas de revocatoria del mandato parlamentario.

Bajo estado de sitio, el Congreso no puede ser disuelto.

### **Artículo 135º**

Reunido el nuevo Congreso, puede censurar al Consejo de Ministros, o negarle la cuestión de confianza, después de que el Presidente del Consejo haya expuesto ante el Congreso los actos del Poder Ejecutivo durante el interregno parlamentario.

En ese interregno, el Poder Ejecutivo legisla mediante decretos de urgencia, de los que da cuenta a la Comisión Permanente para que los examine y los eleve al Congreso, una vez que éste se instale.

### **Artículo 136º**

Si las elecciones no se efectúan dentro del plazo señalado, el Congreso disuelto se reúne de pleno derecho, recobra sus facultades, y destituye al Consejo de Ministros. Ninguno de los miembros de éste puede ser nombrado nuevamente ministro durante el resto del período presidencial.

El Congreso extraordinariamente así elegido sustituye al anterior, incluida la Comisión Permanente, y completa el período Constitucional del Congreso disuelto.

## **CAPITULO VII REGIMEN DE EXCEPCION**

### **Artículo 137º**

El Presidente de la República, con acuerdo del Consejo de Ministros, puede decretar, por plazo determinado, en todo el territorio nacional, o en parte de él, y dando cuenta al Congreso o a la Comisión Permanente, los estados de excepción que en este Artículo se contemplan:

1. Estado de emergencia, en caso de perturbación de la paz o del orden interno, de catástrofe o de graves circunstancias que afecten la vida de la Nación. En esta eventualidad, puede restringirse o suspenderse el ejercicio de los derechos constitucionales relativos a la libertad y la seguridad personales, la inviolabilidad del domicilio, y la libertad de reunión y de tránsito en el territorio comprendidos en los incisos 9, 11 y 12 del Artículo 2º y en el inciso 24, apartado f del mismo Artículo. En ninguna circunstancia se puede desterrar a nadie.

El plazo del estado de emergencia no excede de sesenta días. Su prórroga requiere nuevo decreto. En estado de emergencia las Fuerzas Armadas asumen el control del orden interno si así lo dispone el Presidente de la República.

2. Estado de sitio, en caso de invasión, guerra exterior, guerra civil, o peligro inminente de que se produzcan, con mención de los derechos fundamentales cuyo ejercicio no se restringe o suspende. El plazo correspondiente no excede de cuarenta y cinco días. Al decretarse el estado de sitio, el Congreso se reúne de pleno derecho. La prórroga requiere aprobación del Congreso.

## **CAPITULO VIII PODER JUDICIAL**

### **Artículo 138º**

La potestad de administrar justicia emana del pueblo y se ejerce por el Poder Judicial a través de sus órganos jerárquicos con arreglo a la Constitución y a las leyes.

En todo proceso, de existir incompatibilidad entre una norma constitucional y una norma legal, los jueces prefieren la primera. Igualmente, prefieren la norma legal sobre toda otra norma de rango inferior.

## Artículo 139º

Son principios y derechos de la función jurisdiccional:

1. La unidad y exclusividad de la función jurisdiccional.

No existe ni puede establecerse jurisdicción alguna independiente, con excepción de la militar y la arbitral.

No hay proceso judicial por comisión o delegación.

2. La independencia en el ejercicio de la función jurisdiccional.

Ninguna autoridad puede avocarse a causas pendientes ante el órgano jurisdiccional ni interferir en el ejercicio de sus funciones. Tampoco puede dejar sin efecto resoluciones que han pasado en autoridad de cosa juzgada, ni cortar procedimientos en trámite, ni modificar sentencias ni retardar su ejecución. Estas disposiciones no afectan el derecho de gracia ni la facultad de investigación del Congreso, cuyo ejercicio no debe, sin embargo, interferir en el procedimiento jurisdiccional ni surte efecto jurisdiccional alguno.

3. La observancia del debido proceso y la tutela jurisdiccional.

Ninguna persona puede ser desviada de la jurisdicción predeterminada por la ley, ni sometida a procedimiento distinto de los previamente establecidos, ni juzgada por órganos jurisdiccionales de excepción ni por comisiones especiales creadas al efecto, cualquiera sea su denominación.

4. La publicidad en los procesos, salvo disposición contraria de la ley.

Los procesos judiciales por responsabilidad de funcionarios públicos, y por los delitos cometidos por medio de la prensa y los que se refieren a derechos fundamentales garantizados por la Constitución, son siempre públicos.

5. La motivación escrita de las resoluciones judiciales en todas las instancias, excepto los decretos de mero trámite, con mención expresa de la ley aplicable y de los fundamentos de hecho en que se sustentan.

6. La pluralidad de la instancia.

7. La indemnización, en la forma que determine la ley, por los errores judiciales en los procesos penales y por las detenciones arbitrarias, sin perjuicio de la responsabilidad a que hubiere lugar.

8. El principio de no dejar de administrar justicia por vacío o deficiencia de la ley.

En tal caso, deben aplicarse los principios generales del derecho y el derecho consuetudinario.

9. El principio de inaplicabilidad por analogía de la ley penal y de las normas que restrinjan derechos.

10. El principio de no ser penado sin proceso judicial.

11. La aplicación de la ley más favorable al procesado en caso de duda o de conflicto entre leyes penales.

12. El principio de no ser condenado en ausencia.

13. La prohibición de revivir procesos fenecidos con resolución ejecutoriada. La amnistía, el indulto, el sobreseimiento definitivo y la prescripción producen los efectos de cosa juzgada.

14. El principio de no ser privado del derecho de defensa en ningún estado del proceso. Toda persona será informada inmediatamente y por escrito de la causa o las razones de su detención. Tiene derecho a comunicarse personalmente con un defensor de su elección y a ser asesorada por éste desde que es citada o detenida por cualquier autoridad.

15. El principio de que toda persona debe ser informada, inmediatamente y por escrito, de las causas o razones de su detención.

16. El principio de la gratuitad de la administración de justicia y de la defensa gratuita para las personas de escasos recursos; y, para todos, en los casos que la ley señala.

17. La participación popular en el nombramiento y en la revocación de magistrados, conforme a ley.

18. La obligación del Poder Ejecutivo de prestar la colaboración que en los procesos le sea requerida.

19. La prohibición de ejercer función judicial por quien no ha sido nombrado en la forma prevista por la Constitución o la ley. Los órganos jurisdiccionales no pueden darle posesión del cargo, bajo responsabilidad.

20. El principio del derecho de toda persona de formular análisis y críticas de las resoluciones y sentencias judiciales, con las limitaciones de ley.

21. El derecho de los reclusos y sentenciados de ocupar establecimientos adecuados.

22. El principio de que el régimen penitenciario tiene por objeto la reeducación, rehabilitación y reincorporación del penado a la sociedad.

## Artículo 140º

La pena de muerte sólo puede aplicarse por el delito de Traición a la Patria en caso de guerra, y el de terrorismo, conforme a las leyes y a los tratados de los que el Perú es parte obligada.

#### **Artículo 141º**

Corresponde a la Corte Suprema fallar en casación, o en última instancia, cuando la acción se inicia en una Corte Superior o ante la propia Corte Suprema conforme a ley. Asimismo, conoce en casación las resoluciones del Fuero Militar, con las limitaciones que establece el Artículo 173.

#### **Artículo 142º**

No son revisables en sede judicial las resoluciones del Jurado Nacional de Elecciones en materia electoral, ni las del Consejo Nacional de la Magistratura en materia de evaluación y ratificación de jueces.

#### **Artículo 143º**

El Poder Judicial está integrado por órganos jurisdiccionales que administran justicia en nombre de la Nación, y por órganos que ejercen su gobierno y administración. Los órganos jurisdiccionales son: la Corte Suprema de Justicia y las demás cortes y juzgados que determine su ley orgánica.

#### **Artículo 144º**

El Presidente de la Corte Suprema lo es también del Poder Judicial. La Sala Plena de la Corte Suprema es el órgano máximo de deliberación del Poder Judicial.

#### **Artículo 145º**

El Poder Judicial presenta su proyecto de presupuesto al Poder Ejecutivo y lo sustenta ante el Congreso.

#### **Artículo 146º**

La función jurisdiccional es incompatible con cualquiera otra actividad pública o privada, con excepción de la docencia universitaria fuera del horario de trabajo.

Los jueces sólo perciben las remuneraciones que les asigna el Presupuesto y las provenientes de la enseñanza o de otras tareas expresamente previstas por la ley.

El Estado garantiza a los magistrados judiciales:

1. Su independencia. Sólo están sometidos a la Constitución y la ley.
2. La inamovilidad en sus cargos. No pueden ser trasladados sin su consentimiento.
3. Su permanencia en el servicio, mientras observen conducta e idoneidad propias de su función. Y
4. Una remuneración que les asegure un nivel de vida digno de su misión y jerarquía.

#### **Artículo 147º**

Para ser Magistrado de la Corte Suprema se requiere:

1. Ser peruano de nacimiento;
2. Ser ciudadano en ejercicio;
3. Ser mayor de cuarenta y cinco años;
4. Haber sido magistrado de la Corte Superior o Fiscal Superior durante diez años, o haber ejercido la abogacía o la cátedra universitaria en materia jurídica durante quince años.

#### **Artículo 148º**

Las resoluciones administrativas que causan estado son susceptibles de impugnación mediante la acción contencioso-administrativa.

#### **Artículo 149º**

Las autoridades de las Comunidades Campesinas y Nativas, con el apoyo de las Rondas Campesinas, pueden ejercer las funciones jurisdiccionales dentro de su ámbito territorial de conformidad con el derecho consuetudinario, siempre que no violen los derechos fundamentales de la persona. La ley establece las formas

de coordinación de dicha jurisdicción especial con los Juzgados de Paz y con las demás instancias del Poder Judicial.

## **CAPITULO IX DEL CONSEJO NACIONAL DE LA MAGISTRATURA**

### **Artículo 150º**

El Consejo Nacional de la Magistratura se encarga de la selección y el nombramiento de los jueces y fiscales, salvo cuando éstos provengan de elección popular.

El Consejo Nacional de la Magistratura es independiente y se rige por su Ley Orgánica.

### **Artículo 151º**

La Academia de la Magistratura, que forma parte del Poder Judicial, se encarga de la formación y capacitación de jueces y fiscales en todos sus niveles, para los efectos de su selección.

Es requisito para el ascenso la aprobación de los estudios especiales que requiera dicha Academia.

### **Artículo 152º**

Los Jueces de Paz provienen de elección popular.

Dicha elección, sus requisitos, el desempeño jurisdiccional, la capacitación y la duración en sus cargos son normados por ley.

La ley puede establecer la elección de los jueces de primera instancia y determinar los mecanismos pertinentes.

### **Artículo 153º**

Los jueces y fiscales están prohibidos de participar en política, de sindicarse y de declararse en huelga.

### **Artículo 154º**

Son funciones del Consejo Nacional de la Magistratura:

1. Nombrar, previo concurso público de méritos y evaluación personal, a los jueces y fiscales de todos los niveles. Dichos nombramientos requieren el voto conforme de los dos tercios del número legal de sus miembros.
2. Ratificar a los jueces y fiscales de todos los niveles cada siete años. Los no ratificados no pueden reincorporarse al Poder Judicial ni al Ministerio Público. El proceso de ratificación es independiente de las medidas disciplinarias.
3. Aplicar la sanción de destitución a los Vocales de la Corte Suprema y Fiscales Supremos y, a solicitud de la Corte Suprema o de la Junta de Fiscales Supremos, respectivamente, a los jueces y fiscales de todas las instancias. La resolución final, motivada y con previa audiencia del interesado, es inimpugnable.
4. Extender a los jueces y fiscales el título oficial que los acredita.

### **Artículo 155º**

Son miembros del Consejo Nacional de la Magistratura, conforme a la ley de la materia:

1. Uno elegido por la Corte Suprema, en votación secreta en Sala Plena.
2. Uno elegido, en votación secreta, por la Junta de Fiscales Supremos.
3. Uno elegido por los miembros de los Colegios de Abogados del país, en votación secreta.
4. Dos elegidos, en votación secreta, por los miembros de los demás Colegios Profesionales del país, conforme a ley.
5. Uno elegido en votación secreta, por los rectores de las universidades nacionales.
6. Uno elegido, en votación secreta, por los rectores de las universidades particulares.

El número de miembros del Consejo Nacional de la Magistratura puede ser ampliado por éste a nueve, con

dos miembros adicionales elegidos en votación secreta por el mismo Consejo, entre sendas listas propuestas por las instituciones representativas del sector laboral y del empresarial.

Los miembros titulares del Consejo Nacional de la Magistratura son elegidos, conjuntamente con los suplentes, por un período de cinco años.

#### **Artículo 156º**

Para ser miembro del Consejo Nacional de la Magistratura se requieren los mismos requisitos que para ser Vocal de la Corte Suprema, salvo lo previsto en el inciso 4 del Artículo 147. El miembro del Consejo Nacional de la Magistratura goza de los mismos beneficios y derechos y está sujeto a las mismas obligaciones e incompatibilidades.

#### **Artículo 157º**

Los miembros del Consejo Nacional de la Magistratura pueden ser removidos por causa grave mediante acuerdo del Congreso adoptado con el voto conforme de los dos tercios del número legal de miembros.

### **CAPITULO X DEL MINISTERIO PUBLICO**

#### **Artículo 158º**

El Ministerio Público es autónomo. El Fiscal de la Nación lo preside. Es elegido por la Junta de Fiscales Supremos. El cargo de Fiscal de la Nación dura tres años, y es prorrogable, por reelección, sólo por otros dos. Los miembros del Ministerio Público tienen los mismos derechos y prerrogativas y están sujetos a las mismas obligaciones que los del Poder Judicial en la categoría respectiva. Les afectan las mismas incompatibilidades. Su nombramiento está sujeto a requisitos y procedimientos idénticos a los de los miembros Poder Judicial en su respectiva categoría.

#### **Artículo 159º**

Corresponde al Ministerio Público:

1. Promover de oficio, o a petición de parte, la acción judicial en defensa de la legalidad y de los intereses públicos tutelados por el derecho.
2. Velar por la independencia de los órganos jurisdiccionales y por la recta administración de justicia.
3. Representar en los procesos judiciales a la sociedad.
4. Conducir desde su inicio la investigación del delito. Con tal propósito, la Policía Nacional está obligada a cumplir los mandatos del Ministerio Público en el ámbito de su función.
5. Ejercitar la acción penal de oficio o a petición de parte.
6. Emitir dictamen previo a las resoluciones judiciales en los casos que la ley contempla.
7. Ejercer iniciativa en la formación de las leyes; y dar cuenta al Congreso, o al Presidente de la República, de los vacíos o defectos de la legislación.

#### **Artículo 160º**

El proyecto de presupuesto del Ministerio Público se aprueba por la Junta de Fiscales Supremos. Se presenta ante el Poder Ejecutivo y se sustenta en esa instancia y en el Congreso.

### **CAPITULO XI DE LA DEFENSORIA DEL PUEBLO**

#### **Artículo 161º**

La Defensoría del Pueblo es autónoma. Los órganos públicos están obligados a colaborar con la Defensoría del Pueblo cuando ésta lo requiere.

Su estructura, en el ámbito nacional, se establece por ley orgánica.

El Defensor del Pueblo es elegido y removido por el Congreso con el voto de los dos tercios de su número legal. Goza de la misma inmunidad y de las mismas prerrogativas de los congresistas.

Para ser elegido Defensor del Pueblo se requiere haber cumplido treinta y cinco años de edad y ser abogado. El cargo dura cinco años y no está sujeto a mandato imperativo. Tiene las mismas incompatibilidades que los vocales supremos.

#### **Artículo 162º**

Corresponde a la Defensoría del Pueblo defender los derechos constitucionales y fundamentales de la persona y de la comunidad; y supervisar el cumplimiento de los deberes de la administración estatal y la prestación de los servicios públicos a la ciudadanía.

El Defensor del Pueblo presenta informe al Congreso una vez al año, y cada vez que éste lo solicita. Tiene iniciativa en la formación de las leyes. Puede proponer las medidas que faciliten el mejor cumplimiento de sus funciones.

El proyecto de presupuesto de la Defensoría del Pueblo es presentado ante el Poder Ejecutivo y sustentado por su titular en esa instancia y en el Congreso.

### **CAPITULO XII DE LA SEGURIDAD Y DE LA DEFENSA NACIONAL**

#### **Artículo 163º**

El Estado garantiza la seguridad de la Nación mediante el Sistema de Defensa Nacional.

La Defensa Nacional es integral y permanente. Se desarrolla en los ámbitos interno y externo. Toda persona, natural o jurídica, está obligada a participar en la Defensa Nacional, de conformidad con la ley.

#### **Artículo 164º**

La dirección, la preparación y el ejercicio de la Defensa Nacional se realizan a través de un sistema cuya organización y cuyas funciones determina la ley. El Presidente de la República dirige el Sistema de Defensa Nacional.

La ley determina los alcances y procedimientos de la movilización para los efectos de la defensa nacional.

#### **Artículo 165º**

Las Fuerzas Armadas están constituidas por el Ejército, la Marina de Guerra y la Fuerza Aérea. Tienen como finalidad primordial garantizar la independencia, la soberanía y la integridad territorial de la República.

Asumen el control del orden interno de conformidad con el Artículo 137º de la Constitución.

#### **Artículo 166º**

La Policía Nacional tiene por finalidad fundamental garantizar, mantener y restablecer el orden interno. Presta protección y ayuda a las personas y a la comunidad. Garantiza el cumplimiento de las leyes y la seguridad del patrimonio público y del privado. Previene, investiga y combate la delincuencia. Vigila y controla las fronteras.

#### **Artículo 167º**

El Presidente de la República es el Jefe Supremo de las Fuerzas Armadas y de la Policía Nacional.

#### **Artículo 168º**

Las leyes y los reglamentos respectivos determinan la organización, las funciones, las especialidades, la

preparación y el empleo; y norman la disciplina de las Fuerzas Armadas y de la Policía Nacional. Las Fuerzas Armadas organizan sus reservas y disponen de ellas según las necesidades de la Defensa Nacional, de acuerdo a ley.

#### **Artículo 169º**

Las Fuerzas Armadas y la Policía Nacional no son deliberantes. Están subordinadas al poder constitucional.

#### **Artículo 170º**

La ley asigna los fondos destinados a satisfacer los requerimientos logísticos de las Fuerzas Armadas y la Policía Nacional. Tales fondos deben ser dedicados exclusivamente a fines institucionales, bajo el control de la autoridad señalada por la ley.

#### **Artículo 171º**

Las Fuerzas Armadas y la Policía Nacional participan en el desarrollo económico y social del país, y en la defensa civil de acuerdo a ley.

#### **Artículo 172º**

El número de efectivos de las Fuerzas Armadas y de la Policía Nacional se fija anualmente por el Poder Ejecutivo. Los recursos correspondientes son aprobados en la Ley de Presupuesto. Los ascensos se confieren de conformidad con la ley. El Presidente de la República otorga los ascensos de los generales y almirantes de las Fuerzas Armadas y de los generales de la Policía Nacional, según propuesta del instituto correspondiente.

#### **Artículo 173º**

En caso de delito de función, los miembros de las Fuerzas Armadas y de la Policía Nacional están sometidos al fuero respectivo y al Código de Justicia Militar. Las disposiciones de éste no son aplicables a los civiles, salvo en el caso de los delitos de traición a la patria y de terrorismo que la ley determina. La casación a que se refiere el Artículo 141 sólo es aplicable cuando se imponga la pena de muerte.

Quienes infringen las normas del Servicio Militar Obligatorio están asimismo sometidos al Código de Justicia Militar.

#### **Artículo 174º**

Los grados y honores, las remuneraciones y las pensiones inherentes a la jerarquía de oficiales de las Fuerzas Armadas y de la Policía Nacional son equivalentes. La ley establece las equivalencias correspondientes al personal militar o policial de carrera que no tiene grado o jerarquía de oficial.

En ambos casos, los derechos indicados sólo pueden retirarse a sus titulares por sentencia judicial.

#### **Artículo 175º**

Sólo las Fuerzas Armadas y la Policía Nacional pueden poseer y usar armas de guerra. Todas las que existen, así como las que se fabriquen o se introduzcan en el país pasan a ser propiedad del Estado sin proceso ni indemnización.

Se exceptúa la fabricación de armas de guerra por la industria privada en los casos que la ley señale.

La ley reglamenta la fabricación, el comercio, la posesión y el uso, por los particulares, de armas distintas de las de guerra.

### **CAPITULO XIII DEL SISTEMA ELECTORAL**

#### **Artículo 176º**

El sistema electoral tiene por finalidad asegurar que las votaciones traduzcan la expresión auténtica, libre y

espontánea de los ciudadanos; y que los escrutinios sean reflejo exacto y oportuno de la voluntad del elector expresada en las urnas por votación directa.

Tiene por funciones básicas el planeamiento, la organización y la ejecución de los procesos electorales o de referéndum u otras consultas populares; el mantenimiento y la custodia de un registro único de identificación de las personas; y el registro de los actos que modifican el estado civil.

#### **Artículo 177º**

El sistema electoral está conformado por el Jurado Nacional de Elecciones; la Oficina Nacional de Procesos Electorales; y el Registro Nacional de Identificación y Estado Civil. Actúan con autonomía y mantienen entre sí relaciones de coordinación, de acuerdo con sus atribuciones.

#### **Artículo 178º**

Compete al Jurado Nacional de Elecciones:

1. Fiscalizar la legalidad del ejercicio del sufragio y de la realización de los procesos electorales, del referéndum y de otras consultas populares, así como también la elaboración de los padrones electorales.
2. Mantener y custodiar el registro de organizaciones políticas.
3. Velar por el cumplimiento de las normas sobre organizaciones políticas y demás disposiciones referidas a materia electoral.
4. Administrar justicia en materia electoral.
5. Proclamar a los candidatos elegidos; el resultado del referéndum o el de otros tipos de consulta popular y expedir las credenciales correspondientes.
6. Las demás que la ley señala.

En materia electoral, el Jurado Nacional de Elecciones tiene iniciativa en la formación de las leyes.

Presenta al Poder Ejecutivo el proyecto de Presupuesto del Sistema Electoral que incluye por separado las partidas propuestas por cada entidad del sistema. Lo sustenta en esa instancia y ante el Congreso.

#### **Artículo 179º**

La máxima autoridad del Jurado Nacional de Elecciones es un Pleno compuesto por cinco miembros:

1. Uno elegido en votación secreta por la Corte Suprema entre sus magistrados jubilados o en actividad. En este segundo caso, se concede licencia al elegido. El representante de la Corte Suprema preside el Jurado Nacional de Elecciones.
2. Uno elegido en votación secreta por la Junta de Fiscales Supremos, entre los Fiscales Supremos jubilados o en actividad. En este segundo caso, se concede licencia al elegido.
3. Uno elegido en votación secreta por el Colegio de Abogados de Lima, entre sus miembros.
4. Uno elegido en votación secreta por los decanos de las Facultades de Derecho de las universidades públicas, entre sus ex decanos.
5. Uno elegido en votación secreta por los decanos de las Facultades de Derecho de las universidades privadas, entre sus ex decanos.

#### **Artículo 180º**

Los integrantes del Pleno del Jurado Nacional de Elecciones no pueden ser menores de cuarenta y cinco años ni mayores de setenta. Son elegidos por un período de cuatro años. Pueden ser reelegidos. La ley establece la forma de renovación alternada cada dos años.

El cargo es remunerado y de tiempo completo. Es incompatible con cualquiera otra función pública, excepto la docencia a tiempo parcial.

No pueden ser miembros del Pleno del Jurado los candidatos a cargos de elección popular, ni los ciudadanos que desempeñan cargos directivos con carácter nacional en las organizaciones políticas, o que los han desempeñado en los cuatro años anteriores a su postulación.

#### **Artículo 181º**

El Pleno del Jurado Nacional de Elecciones aprecia los hechos con criterio de conciencia. Resuelve con

arreglo a ley y a los principios generales de derecho. En materias electorales, de referéndum o de otro tipo de consultas populares, sus resoluciones son dictadas en instancia final, definitiva, y no son revisables. Contra ellas no procede recurso alguno.

#### **Artículo 182º**

El Jefe de la Oficina Nacional de Procesos Electorales es nombrado por el Consejo Nacional de la Magistratura por un período renovable de cuatro años. Puede ser removido por el propio Consejo por falta grave. Está afecto a las mismas incompatibilidades previstas para los integrantes del Pleno del Jurado Nacional de Elecciones.

Le corresponde organizar todos los procesos electorales, de referéndum y los de otros tipos de consulta popular, incluido su presupuesto, así como la elaboración y el diseño de la cédula de sufragio. Le corresponde asimismo la entrega de actas y demás material necesario para los escrutinios y la difusión de sus resultados. Brinda información permanente sobre el cómputo desde el inicio del escrutinio en las mesas de sufragio. Ejerce las demás funciones que la ley le señala.

#### **Artículo 183º**

El Jefe del Registro Nacional de Identificación y Estado Civil es nombrado por el Consejo Nacional de la Magistratura por un período renovable de cuatro años. Puede ser removido por dicho Consejo por falta grave. Está afecto a las mismas incompatibilidades previstas para los integrantes del Pleno del Jurado Nacional de Elecciones.

El Registro Nacional de Identificación y Estado Civil tiene a su cargo la inscripción de los nacimientos, matrimonios, divorcios, defunciones, y otros actos que modifican el estado civil. Emite las constancias correspondientes. Prepara y mantiene actualizado el padrón electoral. Proporciona al Jurado Nacional de Elecciones y a la Oficina Nacional de Procesos Electorales la información necesaria para el cumplimiento de sus funciones. Mantiene el registro de identificación de los ciudadanos y emite los documentos que acreditan su identidad.

Ejerce las demás funciones que la ley señala.

#### **Artículo 184º**

El Jurado Nacional de Elecciones declara la nulidad de un proceso electoral, de un referéndum o de otro tipo de consulta popular cuando los votos nulos o en blanco, sumados o separadamente, superan los dos tercios del número de votos emitidos.

La ley puede establecer proporciones distintas para las elecciones municipales.

#### **Artículo 185º**

El escrutinio de los votos en toda clase de elecciones, de referéndum o de otro tipo de consulta popular se realiza en acto público e ininterrumpido sobre la mesa de sufragio. Sólo es revisable en los casos de error material o de impugnación, los cuales se resuelven conforme a ley.

#### **Artículo 186º**

La Oficina Nacional de Procesos Electorales dicta las instrucciones y disposiciones necesarias para el mantenimiento del orden y la protección de la libertad personal durante los comicios. Estas disposiciones son de cumplimiento obligatorio para las Fuerzas Armadas y la Policía Nacional.

#### **Artículo 187º**

En las elecciones pluripersonales hay representación proporcional, conforme al sistema que establece la ley. La ley contiene disposiciones especiales para facilitar el voto de los peruanos residentes en el extranjero.

## **CAPITULO XIV DE LA DESCENTRALIZACION, LAS REGIONES Y LAS MUNICIPALIDADES**

## **Artículo 188º**

La descentralización es una forma de organización democrática y constituye una política permanente de Estado, de carácter obligatorio, que tiene como objetivo fundamental el desarrollo integral del país. El proceso de descentralización se realiza por etapas, en forma progresiva y ordenada conforme a criterios que permitan una adecuada asignación de competencias y transferencia de recursos del gobierno nacional hacia los gobiernos regionales y locales.

Los Poderes del Estado y los Organismos Autónomos así como el Presupuesto de la República se descentralizan de acuerdo a ley.

*(\* Artículo modificado por Ley N° 27.680 del 7 de marzo de 2002)*

## **Artículo 189º**

El territorio de la República está integrado por regiones, departamentos, provincias y distritos, en cuyas circunscripciones se constituye y organiza el gobierno a nivel nacional, regional y local, en los términos que establece la Constitución y la ley, preservando la unidad e integridad del Estado y de la Nación.

El ámbito del nivel regional de gobierno son las regiones y departamentos. El ámbito del nivel local de gobierno son las provincias, distritos y los centros poblados.

*(\* Artículo modificado por Ley N° 27.680 del 7 de marzo de 2002)*

## **Artículo 190º**

Las regiones se crean sobre la base de áreas contiguas integradas histórica, cultural, administrativa y económicamente, conformando unidades geoeconómicas sostenibles.

El proceso de regionalización se inicia eligiendo gobiernos en los actuales departamentos y la provincia constitucional del Callao. Estos gobiernos son gobiernos regionales.

Mediante referéndum podrán integrarse dos o más circunscripciones departamentales contiguas para constituir una región, conforme a ley. Igual procedimiento siguen las provincias y distritos contiguos para cambiar de circunscripción regional.

La ley determina las competencias y facultades adicionales, así como incentivos especiales, de las regiones así integradas.

Mientras dure el proceso de integración, dos o más gobiernos regionales podrán crear mecanismos de coordinación entre sí. La ley determinará esos mecanismos.

*(\* Artículo modificado por Ley N° 27.680 del 7 de marzo de 2002)*

## **Artículo 191º**

Los gobiernos regionales tienen autonomía política, económica y administrativa en los asuntos de su competencia. Coordinan con las municipalidades sin interferir sus funciones y atribuciones.

La estructura orgánica básica de estos gobiernos la conforman el Consejo Regional como órgano normativo y fiscalizador, el Presidente como órgano ejecutivo, y el Consejo de Coordinación Regional integrado por los alcaldes provinciales y por representantes de la sociedad civil, como órgano consultivo y de coordinación con las municipalidades, con las funciones y atribuciones que les señala la ley.

El Consejo Regional tendrá un mínimo de siete (7) miembros y un máximo de veinticinco (25), debiendo

haber un mínimo de uno (1) por provincia y el resto, de acuerdo a ley, siguiendo un criterio de población electoral.

El Presidente es elegido conjuntamente con un vicepresidente, por sufragio directo por un periodo de cuatro (4) años, y puede ser reelegido. Los miembros del Consejo Regional son elegidos en la misma forma y por igual periodo. El mandato de dichas autoridades es revocable, conforme a ley, e irrenunciable, con excepción de los casos previstos en la Constitución.

Para postular a Presidente de la República, Vicepresidente, miembro del Parlamento Nacional o Alcalde; los Presidentes de los Gobiernos Regionales deben renunciar al cargo seis (6) meses antes de la elección respectiva.

La ley establece porcentajes mínimos para hacer accesible la representación de género, comunidades campesinas y nativas, y pueblos originarios en los Consejos Regionales. Igual tratamiento se aplica para los Concejos Municipales.

(\* *Artículo modificado por Ley N° 27.680 del 7 de marzo de 2002*)

(\* *Artículo modificado por Ley N° 28.607 del 4 de octubre de 2005*)

### **Artículo 192º**

Los gobiernos regionales promueven el desarrollo y la economía regional, fomentan las inversiones, actividades y servicios públicos de su responsabilidad, en armonía con las políticas y planes nacionales y locales de desarrollo.

Son competentes para:

1. Aprobar su organización interna y su presupuesto.
2. Formular y aprobar el plan de desarrollo regional concertado con las municipalidades y la sociedad civil.
3. Administrar sus bienes y rentas.
4. Regular y otorgar las autorizaciones, licencias y derechos sobre los servicios de su responsabilidad.
5. Promover el desarrollo socioeconómico regional y ejecutar los planes y programas correspondientes.
6. Dictar las normas inherentes a la gestión regional.
7. Promover y regular actividades y/o servicios en materia de agricultura, pesquería, industria, agroindustria, comercio, turismo, energía, minería, vialidad, comunicaciones, educación, salud y medio ambiente, conforme a ley.
8. Fomentar la competitividad, las inversiones y el financiamiento para la ejecución de proyectos y obras de infraestructura de alcance e impacto regional.
9. Presentar iniciativas legislativas en materias y asuntos de su competencia.
10. Ejercer las demás atribuciones inherentes a su función, conforme a ley.

(\* *Artículo modificado por Ley N° 27.680 del 7 de marzo de 2002*)

### **Artículo 193º**

Son bienes y rentas de los gobiernos regionales:

1. Los bienes muebles e inmuebles de su propiedad.
2. Las transferencias específicas que les asigne la Ley Anual de Presupuesto.
3. Los tributos creados por ley a su favor.
4. Los derechos económicos que generen por las privatizaciones, concesiones y servicios que otorguen,

conforme a ley.

5. Los recursos asignados del Fondo de Compensación Regional, que tiene carácter redistributivo, conforme a ley.
6. Los recursos asignados por concepto de canon.
7. Los recursos provenientes de sus operaciones financieras, incluyendo aquellas que realicen con el aval del Estado, conforme a ley.
8. Los demás que determine la ley.

(\* *Artículo modificado por Ley N° 27.680 del 7 de marzo de 2002*)

#### **Artículo 194º**

Las municipalidades provinciales y distritales son los órganos de gobierno local. Tienen autonomía política, económica y administrativa en los asuntos de su competencia. Las municipalidades de los centros poblados son creadas conforme a ley.

La estructura orgánica del gobierno local la conforman el Concejo Municipal como órgano normativo y fiscalizador y la Alcaldía como órgano ejecutivo, con las funciones y atribuciones que les señala la ley.

Los alcaldes y regidores son elegidos por sufragio directo, por un período de cuatro (4) años. Pueden ser reelegidos. Su mandato es revocable, conforme a ley, e irrenunciable, con excepción de los casos previstos en la Constitución.

Para postular a Presidente de la República, Vicepresidente, miembro del Parlamento Nacional o Presidente del Gobierno Regional; los Alcaldes deben renunciar seis (6) meses antes de la elección respectiva.

(\* *Artículo modificado por Ley N° 27.680 del 7 de marzo de 2002*)

(\* *Artículo modificado por Ley N° 28.607 del 4 de octubre de 2005*)

#### **Artículo 195º**

Los gobiernos locales promueven el desarrollo y la economía local, y la prestación de los servicios públicos de su responsabilidad, en armonía con las políticas y planes nacionales y regionales de desarrollo.

Son competentes para:

1. Aprobar su organización interna y su presupuesto.
2. Aprobar el plan de desarrollo local concertado con la sociedad civil.
3. Administrar sus bienes y rentas.
4. Crear, modificar y suprimir contribuciones, tasas, arbitrios, licencias y derechos municipales, conforme a ley.
5. Organizar, reglamentar y administrar los servicios públicos locales de su responsabilidad.
6. Planificar el desarrollo urbano y rural de sus circunscripciones, incluyendo la zonificación, urbanismo y el acondicionamiento territorial.
7. Fomentar la competitividad, las inversiones y el financiamiento para la ejecución de proyectos y obras de infraestructura local.
8. Desarrollar y regular actividades y/o servicios en materia de educación, salud, vivienda, saneamiento, medio ambiente, sustentabilidad de los recursos naturales, transporte colectivo, circulación y tránsito, turismo, conservación de monumentos arqueológicos e históricos, cultura, recreación y deporte, conforme a ley.
9. Presentar iniciativas legislativas en materias y asuntos de su competencia.
10. Ejercer las demás atribuciones inherentes a su función, conforme a ley.

(\* *Artículo modificado por Ley N° 27.680 del 7 de marzo de 2002*)

## **Artículo 196º**

Son bienes y rentas de las municipalidades:

1. Los bienes muebles e inmuebles de su propiedad.
2. Los tributos creados por ley a su favor.
3. Las contribuciones, tasas, arbitrios, licencias y derechos creados por Ordenanzas Municipales, conforme a ley.
4. Los derechos económicos que generen por las privatizaciones, concesiones y servicios que otorguen, conforme a ley.
5. Los recursos asignados del Fondo de Compensación Municipal, que tiene carácter redistributivo, conforme a ley.
6. Las transferencias específicas que les asigne la Ley Anual de Presupuesto.
7. Los recursos asignados por concepto de canon.
8. Los recursos provenientes de sus operaciones financieras, incluyendo aquellas que requieran el aval del Estado, conforme a ley.
9. Los demás que determine la ley.

(\* *Artículo modificado por Ley N° 27.680 del 7 de marzo de 2002*)

## **Artículo 197º**

Las municipalidades promueven, apoyan y reglamentan la participación vecinal en el desarrollo local. Asimismo brindan servicios de seguridad ciudadana, con la cooperación de la Policía Nacional del Perú, conforme a ley.

(\* *Artículo modificado por Ley N° 27.680 del 7 de marzo de 2002*)

## **Artículo 198º**

La Capital de la República no integra ninguna región. Tiene régimen especial en las leyes de descentralización y en la Ley Orgánica de Municipalidades. La Municipalidad Metropolitana de Lima ejerce sus competencias dentro del ámbito de la provincia de Lima.

Las municipalidades de frontera tienen, asimismo, régimen especial en la Ley Orgánica de Municipalidades.

(\* *Artículo modificado por Ley N° 27.680 del 7 de marzo de 2002*)

## **Artículo 199º**

Los gobiernos regionales y locales son fiscalizados por sus propios órganos de fiscalización y por los organismos que tengan tal atribución por mandato constitucional o legal, y están sujetos al control y supervisión de la Contraloría General de la República, la que organiza un sistema de control descentralizado y permanente. Los mencionados gobiernos formulan sus presupuestos con la participación de la población y rinden cuenta de su ejecución, anualmente, bajo responsabilidad, conforme a ley.

(\* *Artículo modificado por Ley N° 27.680 del 7 de marzo de 2002*)

## **TITULO V DE LAS GARANTIAS CONSTITUCIONALES**

## **Artículo 200º**

Son garantías constitucionales:

1. La Acción de Hábeas Corpus, que procede ante el hecho u omisión, por parte de cualquier autoridad, funcionario o persona, que vulnera o amenaza la libertad individual o los derechos constitucionales conexos.
2. La Acción de Amparo, que procede contra el hecho u omisión, por parte de cualquier autoridad, funcionario o persona, que vulnera o amenaza los demás derechos reconocidos por la Constitución, con excepción de los señalados en el inciso siguiente. No procede contra normas legales ni contra Resoluciones Judiciales emanadas de procedimiento regular.

(\* *Inciso reformado por Ley N° 26.470 del 12 de junio de 1995.*)

3. La Acción de Hábeas Data, que procede contra el hecho u omisión, por parte de cualquier autoridad, funcionario o persona, que vulnera o amenaza los derechos a que se refiere el Artículo 2º, incisos 5) y 6) de la Constitución.

(\* *Inciso reformado por Ley N° 26.470 del 12 de junio de 1995.*)

4. La Acción de Inconstitucionalidad, que procede contra las normas que tienen rango de ley: leyes, decretos legislativos, decretos de urgencia, tratados, reglamentos del Congreso, normas regionales de carácter general y ordenanzas municipales que contravengan la Constitución en la forma o en el fondo.

5. La Acción Popular, que procede, por infracción de la Constitución y de la ley, contra los reglamentos, normas administrativas y resoluciones y decretos de carácter general, cualquiera sea la autoridad de la que emanen.

6. La Acción de Cumplimiento, que procede contra cualquier autoridad o funcionario renuente a acatar una norma legal o un acto administrativo, sin perjuicio de las responsabilidades de ley.

Una ley orgánica regula el ejercicio de estas garantías y los efectos de la declaración de inconstitucionalidad o ilegalidad de las normas.

El ejercicio de las acciones de hábeas corpus y de amparo no se suspende durante la vigencia de los regímenes de excepción a que se refiere el Artículo 137º de la Constitución.

Cuando se interponen acciones de esta naturaleza en relación con derechos restringidos o suspendidos, el órgano jurisdiccional competente examina la razonabilidad y la proporcionalidad del acto restrictivo. No corresponde al juez cuestionar la declaración del estado de emergencia ni de sitio

## **Artículo 201º**

El Tribunal Constitucional es el órgano de control de la Constitución. Es autónomo e independiente. Se compone de siete miembros elegidos por cinco años.

Para ser miembro del Tribunal Constitucional, se exigen los mismos requisitos que para ser vocal de la Corte Suprema. Los miembros del Tribunal Constitucional gozan de la misma inmunidad y de las mismas prerrogativas que los congresistas. Les alcanzan las mismas incompatibilidades. No hay reelección inmediata. Los miembros del Tribunal Constitucional son elegidos por el Congreso de la República con el voto favorable de los dos tercios del número legal de sus miembros. No pueden ser elegidos magistrados del Tribunal Constitucional los jueces o fiscales que no han dejado el cargo con un año de anticipación.

## **Artículo 202º**

Corresponde al Tribunal Constitucional:

1. Conocer, en instancia única, la acción de inconstitucionalidad.
2. Conocer, en última y definitiva instancia, las resoluciones denegatorias de hábeas corpus, amparo, hábeas data, y acción de cumplimiento.
3. Conocer los conflictos de competencia, o de atribuciones asignadas por la Constitución, conforme a ley.

## **Artículo 203º**

Están facultados para interponer acción de inconstitucionalidad:

1. El Presidente de la República;
2. El Fiscal de la Nación;
3. El Defensor del Pueblo;
4. El veinticinco por ciento del número legal de congresistas;

5. Cinco mil ciudadanos con firmas comprobadas por el Jurado Nacional de Elecciones. Si la norma es una ordenanza municipal, está facultado para impugnarla el uno por ciento de los ciudadanos del respectivo ámbito territorial, siempre que este porcentaje no exceda del número de firmas anteriormente señalado;
6. Los presidentes de Región con acuerdo del Consejo de Coordinación Regional, o los alcaldes provinciales con acuerdo de su Concejo, en materias de su competencia.
7. Los colegios profesionales, en materias de su especialidad.

#### **Artículo 204º**

La sentencia del Tribunal que declara la inconstitucionalidad de una norma se publica en el diario oficial. Al día siguiente de la publicación, dicha norma queda sin efecto.

No tiene efecto retroactivo la sentencia del Tribunal que declara inconstitucional, en todo o en parte, una norma legal.

#### **Artículo 205º**

Agotada la jurisdicción interna, quien se considere lesionado en los derechos que la Constitución reconoce puede recurrir a los tribunales u organismos internacionales constituidos según tratados o convenios de los que el Perú es parte.

### **TITULO VI DE LA REFORMA DE LA CONSTITUCION**

#### **Artículo 206º**

Toda reforma Constitucional debe ser aprobada por el Congreso con mayoría absoluta del número legal de sus miembros, y ratificada mediante referéndum. Puede omitirse el referéndum cuando el acuerdo del Congreso se obtiene en dos legislaturas ordinarias sucesivas con una votación favorable, en cada caso, superior a los dos tercios del número legal de congresistas. La ley de reforma constitucional no puede ser observada por el Presidente de la República.

La iniciativa de reforma constitucional corresponde al Presidente de la República, con aprobación del Consejo de Ministros; a los congresistas; y a un número de ciudadanos equivalente al cero punto tres por ciento (0.3%) de la población electoral, con firmas comprobadas por la autoridad electoral.

### **DISPOSICIONES FINALES Y TRANSITORIAS**

#### **Primera.**

Declárase cerrado definitivamente el régimen pensionario del Decreto Ley N° 20530. En consecuencia a partir de la entrada en vigencia de esta Reforma Constitucional:

1. No están permitidas las nuevas incorporaciones o reincorporaciones al régimen pensionario del Decreto Ley N° 20530.
2. Los trabajadores que, perteneciendo a dicho régimen, no hayan cumplido con los requisitos para obtener la pensión correspondiente, deberán optar entre el Sistema Nacional de Pensiones o el Sistema Privado de Administradoras de Fondos de Pensiones.

Por razones de interés social, las nuevas reglas pensionarias establecidas por ley se aplicarán inmediatamente a los trabajadores y pensionistas de los regímenes pensionarios a cargo del Estado, según corresponda. No se podrá prever en ellas la nivelación de las pensiones con las remuneraciones, ni la reducción del importe de las pensiones que sean inferiores a una Unidad Impositiva Tributaria.

La ley dispondrá la aplicación progresiva de topes a las pensiones que excedan de una Unidad Impositiva Tributaria.

El ahorro presupuestal que provenga de la aplicación de nuevas reglas pensionarias será destinado a incrementar las pensiones mas bajas, conforme a ley.

Las modificaciones que se introduzcan en los régimenes pensionarios actuales, así como los nuevos régimenes pensionarios que se establezcan en el futuro, deberán regirse por los criterios de sostenibilidad financiera y no nivelación.

Autorízase a la entidad competente del Gobierno Nacional a iniciar las acciones legales correspondientes para que se declare la nulidad de las pensiones obtenidas ilegalmente, salvo los casos definidos por sentencias con carácter de cosa juzgada que se hayan pronunciado expresamente sobre el fondo del asunto o que las respectivas acciones hubieran prescrito.

(*\* Disposición modificada por Ley N° 28.389 del 17 de noviembre de 2004*)

**Segunda.**

El Estado garantiza el pago oportuno y el reajuste periódico de las pensiones que administra, con arreglo a las previsiones presupuestarias que éste destine para tales efectos, y a las posibilidades de la economía nacional.

**Tercera.**

En tanto subsistan régimenes diferenciados de trabajo entre la actividad privada y la pública, en ningún caso y por ningún concepto pueden acumularse servicios prestados bajo ambos régimenes. Es nulo todo acto o resolución en contrario.

**Cuarta.**

Las normas relativas a los derechos y a las libertades que la Constitución reconoce se interpretan de conformidad con la Declaración Universal de Derechos Humanos y con los tratados y acuerdos internacionales sobre las mismas materias ratificados por el Perú.

**Quinta.**

Las elecciones municipales se alternan con las generales de modo que aquéllas se realizan a mitad del período presidencial, conforme a ley. Para el efecto, el mandato de los alcaldes y regidores que sean elegidos en las dos próximas elecciones municipales durará tres y cuatro años respectivamente.

**Sexta.**

Los alcaldes y regidores elegidos en el proceso electoral de 1993 y sus elecciones complementarias concluyen su mandato el 31 de diciembre de 1995.

**Sétima.**

El primer proceso de elecciones generales que se realice a partir de la vigencia de la presente Constitución, en tanto se desarrolla el proceso de descentralización, se efectúa por distrito único.

**Octava.**

Las disposiciones de la Constitución que lo requieran son materia de leyes de desarrollo constitucional.

Tienen prioridad :

1. Las normas de descentralización y, entre ellas, las que permitan tener nuevas autoridades elegidas a más tardar en 1995. Y
2. Las relativas a los mecanismos y al proceso para eliminar progresivamente los monopolios legales otorgados en las concesiones y licencias de servicios públicos.

**Novena.**

La renovación de los miembros del Jurado Nacional de Elecciones, instalado conforme a esta Constitución, se inicia con los elegidos por el Colegio de Abogados de Lima y por las Facultades de Derecho de las universidades públicas.

**Décima.**

La ley establece el modo como las oficinas, los funcionarios y servidores del Registro Civil de los gobiernos locales y los del Registro Electoral se integran al Registro Nacional de Identificación y Estado Civil.

**Undécima.**

Las disposiciones de la Constitución que exijan nuevos o mayores gastos públicos se aplican progresivamente.

**Duodécima.**

La organización política departamental de la República comprende los departamentos siguientes: Amazonas, Ancash, Apurímac, Arequipa, Ayacucho, Cajamarca, Cusco, Huancavelica, Huánuco, Ica, Junín, La Libertad, Lambayeque, Lima, Loreto, Madre de Dios, Moquegua, Pasco, Piura, Puno, San Martín, Tacna, Tumbes, Ucayali; y la Provincia Constitucional del Callao.

**Decimotercera.**

Mientras no se constituyan las Regiones y hasta que se elija a sus presidentes de acuerdo con esta Constitución, el Poder Ejecutivo determina la jurisdicción de los Consejos Transitorios de Administración Regional actualmente en funciones, según el área de cada uno de los departamentos establecidos en el país.

**Decimocuarta.**

La presente Constitución, una vez aprobada por el Congreso Constituyente Democrático, entra en vigencia, conforme al resultado del referéndum regulado mediante ley constitucional.

**Decimoquinta.**

Las disposiciones contenidas en la presente Constitución, referidas a número de congresistas, duración del mandato legislativo, y Comisión Permanente, no se aplican para el Congreso Constituyente Democrático.

**Decimosexta.**

Promulgada la presente Constitución, sustituye a la del año 1979.

## **DISPOSICIONES TRANSITORIAS ESPECIALES**

**Primera.-** El Presidente y los Vicepresidentes de la República elegidos en las Elecciones Generales de 2000, concluirán su mandato el 28 de julio de 2001. Los congresistas elegidos en el mismo proceso electoral culminarán su representación el 26 de julio de 2001. No son de aplicación para ellos, por excepción, los plazos establecidos en los artículos 90° y 112° de la Constitución Política.

**Segunda.-** Para efectos del proceso electoral que se realice en el 2001, el plazo previsto en el primer párrafo del artículo 91° de la Constitución será de cuatro meses.

(*\* Disposiciones Transitorias Especiales introducidas por Ley N° 27.365 del 5 de noviembre de 2000.*)

## **DECLARACION**

### **EL CONGRESO CONSTITUYENTE DEMOCRATICO**

DECLARA que el Perú, país del hemisferio austral, vinculado a la Antártida por costas que se proyectan hacia ella, así como por factores ecológicos y antecedentes históricos, y conforme con los derechos y obligaciones que tiene como parte consultiva del Tratado Antártico, propicia la conservación de la Antártida como una Zona de Paz dedicada a la investigación científica, y la vigencia de un régimen internacional que, sin desmedro de los derechos que corresponden a la Nación, promueva en beneficio de toda la humanidad la racional y equitativa explotación de los recursos de la Antártida, y asegure la protección y conservación del ecosistema de dicho Continente.

Fuente / Source: [Congreso de la República del Perú](#)

 

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